HUMAN RIGHTS

IN A DEVELOPING SOCIETY

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SANKAR SEN

The book deals with a number of important human rights problems of a developing society. They traverse a wide field, covering in their sweep problems like human rights violations by the police, nightmarish conditions in Indian prisons, shameless exploitation of women and children and other human rights issues like the rights of the victims of crime. In these articles, the author has drawn on his rich and varied experience of working for more than three and a half decades as a law-enforcement officer and as the Director General of the National Human Rights Commission. The articles reveal a sensitive, alert and analytical mind with deep concern for disadvantaged and disempowered victims of human rights violations.

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SANKAR SEN

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NATIONAL HUMAN RIGHTS COMMISSION
Sardar Patel Bhawan, Sansadd Marg,
New Delhi-110001 INDIA
Phone : (O) 011-3340891, 3347065 (H) 3018085
Fax : 91-011-3366537, 3340016
Telegraphic Address : HUMANRIGHT
E-mail : nhrc.del@x400.nicgw.nic.in

Justice M.N. Venkatachaliah
Chairperson

FOREWORD

Reading a book with a view to writing a foreword can, on occasions, be a taxing chore. But to read these articles of Shri Sankar Sen is quite the opposite. It is pure pleasure. Shri Sen has had a very distinguished career in the Indian Police Service and is known for his high integrity, combining within himself the personality of a criminologist, scholar and author. His record as Director General (Investigation) in the National Human Rights Commission and his professional dedication to the cause of human rights are now well known. He wields a facile pen.

The Human Rights' philosophy is the quest for translating the international standards of human rights "from phrase to action". The incorporating of a Bill of Rights in written Constitutions is to incorporate the Human Rights regime into the municipal law and make them justifiable and enforceable. If it is so incorporated in the Constitution, which is the fundamental law of the land, Human Rights transform themselves into enforceable Fundamental Rights.

The limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential for the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the "device of all self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when action is in the name and wielding the force of the government".

The wide range of the topics in this collection are an indication of Shri Sen's deep learning, versatility and commitment. They could well form the content of any curricula of instructional material for Human Rights' education and training. They cover both philosophy, theory and strategies of enforcement of human rights. I commend this collection to all those who have an abiding concern for human rights as an indispensable discipline for the survival of liberal democracy.

(M.N. Venkatachliah)

PREFACE

After completion of my tenure as the Director of the National Police Academy, I joined as the Director General of the National Human Rights Commission (NHRC). The new assignment gave me an unique opportunity to view some of our deep seated societal and systemic problems from a human rights perspective-from the view-point of the underprivileged and vulnerable groups of the society. This book contains a number of articles expressing my views on human rights issues like insufferable conditions in prisons, gender disparity and violence, malfunctioning of the criminal justice system, exploitation of children etc.

In some of those articles, I have also highlighted the important initiatives of the NHRC for protection and promotion of human rights. Very often people of developing countries, who suffer from appalling social and economic deprivation, view human rights as "sophisticated movements in Geneva, Paris, New York Super-Highways". However, the fact cannot be gainsaid that human rights in developing countries have a transformative potential. They constitute challenges to the forces of entrenched interests and provide tools in the building of a just and civil society. They represent, to my mind, collective striving for human betterment in an imperfect world.

In order to ensure respect for an observance of human rights, it is sine qua non to generate an awareness for human rights in people's mind. This task of concientisation can be achieved only through silent efforts of thousands of people and hundreds of well-meaning organizations holding aloft the banner of human rights. When an individual complains of violation of human rights and seeks remedy, he often pitches himself against the might of the State and its agencies. He is, in the words of Marc Gallanter, merely a 'one-time player' pitched against the 'repeated player' which is the State. Therefore, the Human Rights Commissions and organisation seek to remedy this imbalance by providing an individual with institutional support.

I hope these articles will be useful in comprehending the complexities and multi-dimensional nature of the issues concerning human rights violations and help in formulating appropriate strategies to combat them.

And finally, I acknowledge my indebtedness to Shri K.P. Mohan Das for taking great pains in typing out my hand-written pages and to my wife Gouri, my most exacting critic, for her many valuable suggestions and relentless prodding to complete the book.

December' 97
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Sankar Sen

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SECTION 1

1

UNIVERSALITY OF HUMAN RIGHTS

Human rights have been described as those minimal rights that every individual must have by virtue of his being 'a member of human family' irrespective of any other consideration. They are based on mankind's demand for a life in which the inherent dignity of a human being will receive respect and protection. According to western political and philosophical thinking human rights are innate in individuals and are an intrinsic factor in the 'quality of the human persons'. They are, to quote the words of President Jefferson, "inherent and inalienable rights of man", and hence a state that violates them in its laws and its actions breaches one of the very prerequisites of civil co-existence between States and may be legitimately brought to account.

INTERNATIONAL INSTRUMENTS

The first documentary use of the expression 'human rights' could be seen in the charter of the United Nations which declared promotion and fostering of human rights as one of the basic goals of the United Nations. The charter of United Nations does not define the contents of human rights. The framers of the charter left the task to the organization itself. The International Bill of Human rights which was subsequently drawn up comprises: (1) Universal Declaration of the Human Rights (1948) (2) International Covenant of Economic, Social and Cultural Rights (1966) (3) International Covenant of Civil and Political Rights (1966) (4) Optional protocol providing the rights for individual petition. They incorporate a large number of rights which are now being accepted by the international community as human rights. A body of international law on human rights has now developed codified in the United Nations Charter, Universal Declaration and other international instruments.

In the post-cold world war, the United States and many western countries are laying increasing emphasis on human rights in their foreign policies. This western emphasis on human rights has significantly affected the tone and texture of post-cold war international relations. For developing countries, the western assistance is getting linked with observance of the human rights. In 1974, the United States Government passed the Foreign Assistance Act, of which section 116 was designed to prohibit or restrict assistance to any government "which engages in inconsistent pattern of gross violation of internationally recognized human rights". The United States House of Representative passed the Burton Bill in June, 1992, cutting 24 million dollars of developing assistance to third world countries including India on grounds of "poor human rights records". The Clinton Administration now has made the human rights issue as one of the cornerstones of its foreign policy.

"Protecting human rights and promoting democracy", says John Shattuck, U. S. Assistant Secretary for Democracy, Human Rights and Labour, "are integral elements of the U.S. foreign policy because they serve long-term interests of the U.S, its trading partners and allies, and indeed, the entire international community."

ASIAN PERSPECTIVE

Many Asian countries, which are parties to the U.N. Charter and signatories to the Universal Declaration, however, feel that western countries are using human rights as an instrument for their political and ideological hegemony. There is also discontent over the so-called purely western interpretation of the human rights which touch on extraordinarily delicate matters of culture and values. Indeed, the western posture on human rights is viewed with scepticism by many Asian nations.

These divergent perceptions came into sharp focus in the United Nations conference on Human Rights in Vienna, in June, 1993. The Asian view was put forward forcefully by countries like China, Singapore, Malaysia, which stressed that while human rights are universal in nature, they must be considered in the context of a "dynamic process of international norm-setting, bearing in mind the significance of national and regional peculiarities, and various historical, cultural and religious backgrounds. The Vienna conference, according to Bilahari Kausihan, the Director of the East Asian and Pacific Bureau of the Ministry of Foreign Affairs of Singapore, "witnessed no real dialogue between Asia and the West, no genuine, attempt to address the issues or forge a meeting of the minds." The Chinese delegation at the Vienna conference urged that the "state principles of sovereignty contained in the U.N. Charter and international law is the basis for realization of human rights. Only when the state sovereignty is fully respected can the implementation of human rights be really ensured."

The nub of the Asian criticism of the western concept of human rights is that there are no universal human rights because there is no single human nature, and thus no universal moral law to which appeals across cultures can be made. 'Universality' of human rights is a western imposition on cultures with different moral standards and social traditions—an act of moral and cultural imperialism. There is also criticism that developed countries are seeking to impose western values on non-western societies under the guise of promoting good governance and human rights. The result is that the universal character of the human rights is being challenged by many nations in the South.

It has been aggressively argued by countries like Singapore and Malaysia that the cultural matrix within which relations between individual and state are embedded are fundamentally different in Asia from that in the west. The communication traditions and consensus-seeking approach of Asia is diametrically different from the individualistic ethos of the west. In the document 'Shared Values (1991)' the Government of Singapore asserts that while Asian societies emphasize the interests of the community, western societies stress the rights of the individuals. "The

Singapore society has always weighted group interests more heavily than individual ones". Another aspect of Asian values is the emphasis on duty as a counterpoint to right for ensuring cohesion of society.

Indeed, it is difficult to sustain the view as to how concepts that recognize inherent dignity, equal and inalienable rights of human beings and which recommend the universal spirit of brotherhood can be inimical to indigenous values. This internationalization of the Asian debate on human rights often enables some governments to justify authoritarianism at home and attack as western stooges indigenous supporters of human rights. It will, however, be wrong to dismiss these attacks as self–serving claptrap. It is necessary to have a close look at other currents of influence at work.

There is, doubtless, some substance in the criticism that the human rights establishment in the United Nations has grossly overreached itself. By listing vast numbers of rights as human rights the Universal Declaration and other international instruments have created some confusion. For example, as George Weigel, President of the Ethics and Public Policy Centre, Washington, points out, that the Universal Declaration by putting the "right to periodic holidays with pay" on a legal plane with the fundamental human rights of religious freedom or freedom of expression blunts the moral edge of the inalienability of human rights. Further, endless piling up of the list of the human rights that followed the Universal Declaration, through instruments, like International Convenants on Civil and Political rights, International Covenant on Social, Cultural and

Economic Rights and other international conventions created the confusion that if everything becomes human right, then perhaps nothing becomes 'human right' in any serious and real sense. This conceptual confusion considerably lessened the importance and significance of the human rights.

Another point to be borne in mind in this connection is that economic circumstances of the Asian countries are not similar. While countries like Japan, Singapore, Hongkong are some of the world's most prosperous countries, there is grinding poverty in many countries like Bangladesh, Philippines, India, Pakistan etc. And poverty is a great cause of the denial of human rights. It destroys human dignity and without human dignity there can be no human rights or capacity to challlenge the violation of human rights. It is often vigorously argued that the first priority of State policy in a developing country should be to promote economic development and economic development may require restriction on human rights to provide for stable and secure political framework in which it can be pursued. Order and stability are necessary preconditions for economic growth and without economic growth there cannot be any social order that advances human dignity. In the white paper, 'Human Rights in China', the Chinese Government stated that, "People's right to subsistence will be threatened in the event of social turmoil and the first priority of the state should be to promote economic development which may need restrictions on human rights". This assumption of conflict between human rights and development can be questioned. In the name of social stability and communal interest many

Asian governments have taken draconian measures to muzzle the press, order preventive detention and have betrayed an intolerance of opposition which is in conflict with the so-called communal values.

It may be mentioned in this connection that the General Assembly of the United Nations in the face of abstentions by many western states adopted a Declaration on 'Right to Development' (4th December, 1986) which emphasized that human rights are indivisible and inter-dependent and equal attention should be given to implementation, promotion and protection of all human rights. The Declaration has been described by critics as a fuzzy document trying to be all things to all persons. In fact, the problems remain and the political and ideological clashes are postponed only to emerge more pointedly at the next opportunity.

However, even in the midst of controversies and clash of western and Asian perceptions, there is an acknowledgment of the fact that there are some fundamental human rights whose violations will be condemned unequivocally by all the major cultures of the world. Abuses like torture, rape, racism, anti-semitism, arbitrary detention, ethnic cleansing and politically motivated disappearance are not tolerated by any faith or culture that respects humanity. Nor can they be justified by demands of economic development and political expediency. Perhaps a crucial distinction, as sociologist Peter L. Burger has said, between those notions of human rights which emerge exclusively from "the specifically western values of liberty and equality from those that pertain to human conditions as such is necessary."

Condemnation of the abuses in the latter category would elicit widespread consensus and will not invite the charge of "cultural imperialism". There is thus an over-all agreement, as regards an essential core of human values among almost all the states in the world. In future, it is hoped that this agreement will expand and increasingly embrace a wider range of rights. Progress in this respect will depend on patiently and quietly building consensus on specific objectives and eschewing "transcendent crusades or dramatic confrontations."

2

U.N. CONVENTION AGAINST TORTURE

Torture has been defined as infliction of severe physical pain upon a person in order to force him to act against his will or to punish him. As early as in 1850 the Torture Commission of India attempted to define 'torture', and quoted Dr. Johnson who said that, "torture was fair by which guilt is punished or confession extorted". The World Medical Association in its Tokyo Declaration (1975) gave a clearly stated definition of torture. The Declaration states that 'torture is deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason." It may be noted that definitions of torture try to set out the possible intents of those who practice torture. Chet Scringnar of University, New York defines torture as an intentional trauma deliberately conceived by vilemen to systematically cause pain and suffering to selected individuals ultimately ending with the physical and psychological collapse of the victims. The old notion was that the main purpose was to make people talk. From 1960 onwards, it could be seen that the intention of the torture was to make the general population keep silent and it is this kind of torture which tries to curb and throttle democratic systems.

Torture is rightly considered as the most heinous violation of human rights as it constitutes the very denial of the essence of human rights, namely, recognition that each living being has a personality of his own which has to be respected. Torture takes many forms and course in widely divergent situations. No country, whatever its political system or ideological colour, is indeed free from this scar.

Freedom from torture and other cruel, inhuman, degrading treatment or punishment is proclaimed as a fundamental right of human beings in the Universal Declaration of Human Rights. Article 5 of the Declaration lays down "none shall be subjected to torture or to cruel, inhuman, degrading treatment or punishment." Again Article 7 of the International Covenant on Civil and Political Rights reiterates that none shall be subjected to torture, and in particular "no one shall be subjected, without his free consent, to medical or scientific experimentation." Article 4(2) of the Covenant on Civil and Political Rights clearly stipulates that freedom from torture remains a basic non-derogable human right even in times of public emergency "which threatens the life of the nation and the existence of which is officially proclaimed."

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10th December, 1984 (Resolution 39/46). It went into force in June, 1987 when 20 Member States ratified the Convention. By 1st of September, 1996, 99 States out of it 187 Member States of U.N. had so far ratified it. Earlier in 1975, the United Nations General Assembly had adopted unanimously a Declaration aimed at banning torture. This was mainly of moral and political value. This was followed (after long negotiations blocked for years by Argentinian dictatorship) by a legally binding text. The Convention requires State parties to take adequate and effective steps to prevent torture in any territory under their jurisdiction. Each State party shall ensure that all acts of torture become offences under its Criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature (Article 4). No exceptional circumstances, such as war or public emergency, can be invoked to justify torture (Article 2). Obedience to order from a superior authority or public servant will not be accepted as a justification for torture.

The Convention provides for prosecution or extradition of persons alleged to have committed acts of torture and State parties are called on to afford one another assistance in connection with judicial proceedings concerning acts of torture. The Convention calls on State parties to ensure that education and information regarding the prohibition against torture are included in the training of law-enforcement, civil, military, medical personnel and other persons involved in the custody, interrogation or treatment of detenus. Article 14 of the Convention provides that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation. Other forms of cruel, inhuman or degrading punishment as defined in the Convention which may be committed by persons acting in an official capacity are also prohibited.

The implementation of the Convention is monitored by the Committee against Torture consisting of 10 experts elected by the State parties to the Convention and serving in their personal capacity. State parties to the Convention are required to report regularly to the committee on the measures they have taken to give effect to the provisions of the Convention. Under Article 20 of the Convention, if the committee receives well-founded information that torture is being systematically practised, in the territory of a State party, it will ask the State party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

1984 Convention not only prohibits torture but also forbids inhuman action on a less macroscopic scale—cruel inhuman, degrading treatment or punishment. Thus there is “tightening of the normative mesh” with a view to reducing the scope of discretion of the States. The Committee may also make an enquiry, including a visit to the territory of the State party concerned, with its agreement. The proceedings of the committee are confidential, but the committee may decide to include a summary account of the result of the proceedings in its annual report to the State parties and to the General Assembly.

However, 1984 Convention is binding on States who submit themselves to it. The system of checks on observance of the convention is weak and optional. A State ratifying the convention may elect not to be subject to verification by 'opting out' of the relevant provisions of the Convention.

India has not so far acceded to the Convention against Torture. In a letter to the Prime Minister, the then Chairman of the National Human Rights Commission, Justice Ranganath Misra, had urged that India should accede to the Convention against Torture and this is the "greatest tribute" the country can pay to Mahatma Gandhi, Father of the Nation, on his 125th birth anniversary. The Prime Minister in his reply indicated that he shared the "feelings of the Commission".

However, in the Memorandum of Action Taken on the Annual Report of the National Human Rights Commission for the year (1994-95) the Ministry of Home Affairs stated that the question of India becoming, signatory to the Commission was discussed in the Chief Ministers' Conference held on 5/5/95 and the majority of the Chief Ministers were found either not in favour of the Convention or did not give their views. It was further stated in the Memorandum that as the Convention has to be implemented through the State agencies, due weightage to the views of the State Governments has to be given, and a decision in the matter will be taken after considering the views of all the State governments. This process will delay indefinitely India's accession to the Convention.

It is good to note in this connection that torture has been made a punishable offence under Sections 330 and 331 of the Indian Penal Code. Voluntarily causing hurt to extort confession or information is an offence under Section 330 IPC punishable with 7 years imprisonment and fine and 10 years imprisonment for causing grievous hurt under Section 331 IPC. Under Section 54 of the CrPC the accused person, if brought before a Magistrate can request a medical examination. This provision has been incorporated as a safeguard against torture. The Supreme Court in the case of Francis Coralie Mullin *v* Union Territory of Delhi (AIR 1981 SC 746) held that the expression 'right to life' in the Constitution means the right to live with basic dignity and hence torture or cruel, inhuman, degrading treatment which trenches on human dignity is not permissible under the Constitution. The Supreme Court has also upheld the right to compensation of the victims of torture in a number of cases. Similarly, in quite a few cases of custodial violence NHRC has ordered payment of compensation to the victims of custodial violence and has further directed that this amount should be paid by the errant public servants themselves. The Commission has suggested to the State governments to consider recovery of compensation amount from the offenders to bring about quicker sensitisation.

At its 1985 Session, the United Nations Commission on Human Rights welcomed the adoption by the General Assembly of the Convention against Torture and decided to appoint a Special Rapporteur to examine the various aspects of the question of torture. Mr. Peter H. Korjuman (Netherlands) was appointed as the Special Rapporteur and instructed to seek credible and reliable information concerning torture from governments, specialized agencies and to 'respond effectively' to such information.

The Special Rapporteur in his report referred to practice of torture in many countries where a climate of violence has led to a disheartening loss of respect for the physical and mental integrity of the human person and for his dignity. In this connection the report made special mention of the situation in Afghanistan and Sri Lanka. The report also recommended that introduction of a system of periodic visits by a committee of experts to places of detention or imprisonment will have a salutary preventive effect. Until such systems of periodic visits have been established, there should be granting of admission to International Committee of Red Cross (ICRC) teams to places of detention and imprisonment, as such visits by ICRC may contribute to prevention of torture, and in fact, in some cases have ostensibly done so.

In his report to the United Nations Commission on Human Rights on his 1988 activities, the Special Rapporteur made some important recommendations. The report states that the great majority of allegations received by the Special Rapporteur refer to torture practised during incommunicado detention and hence a formal prohibition of incommunicado detention would greatly reduce the number of reported cases of torture. Further, the Code of Conduct for Law-enforcement officials and the Standard Minimum Rules for the Treatment of Prisoners should be translated into national languages and used as teaching materials during courses for law-enforcement officers, who should also be instructed on their duty to disobey orders received from a superior to practise torture. The Commission on Human Rights on examination the reports of the Special Rapporteur endorsed most of his recommendations and conclusions and expressed their view that torture constitutes a criminal obliteration of human personality which can never be justified by any overriding circumstances or special ideology. The Vienna Declaration and Programme of Action was adopted by the World Conferences on Human Rights in June 1993. The World Conference on Human Rights welcomed ratification by many Member States of the Convention against Torture and other Cruel Inhuman Treatment or Punishment and encouraged speedy ratification by all other Member States. The World Conference on Human Rights also reaffirmed that efforts to eradicate torture should first and foremost concentrate on prevention and therefore calls for early adoption of optional protocol to the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment which is intended to establish a preventive treatment of regular visits to places of detention. The Conference further emphasizes that the State should abrogate legislation leading to impunity for those responsible for gross violation for human rights such as torture and prosecute such violations and thereby providing a firm basis for the rule of law.

It may be mentioned in this connection that in West European countries there has been a remarkable progress in enforcing prohibition of torture. Article 3 of the European Convention on Human Rights contains a sweeping prohibition on torture. The European Commission Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment was open for signature in 1988. It went into force by 1989. By Ist of October, 1996, all the original 23 States of the Council of Western Europe have ratified it. All the new Member States in Central Europe, Albania, Bulgaria, Czech Republic, Hungary, Romania, Poland and Slovakia have also ratified it. The Committee of the Convention, CPT has one member per State. The work of the CPT is done by paying visits to the countries. The competence of the CPT is that they are allowed to inspect all places, where persons are kept against their will by the authorities like the police stations, prisons and mental asylums and interviewing persons in private if they so wish.

The European Human Rights Commission and the European Court of Human Rights in a number of cases held state parties responsible for acts of torture or inhuman treatment. In a famous case concerning Turkey in 1976, the Commission concluded that the fact of not supplying enough food or water or medical treatment to the detainees in the zone of Cyprus under Turkish occupation amounted to inhuman treatment. In the famous Tyrer case the commission found the United Kingdom guilty of breach of article 3 of the European Convention on Human Rights and held that 'birching' of the juveniles as provided by law by British authorities in the Isle of Man is a degrading punishment, without any redeeming social value and is against article 3 of the European Convention.

In India, despite stringent laws and court rulings, torture and degrading treatment of citizens in various forms and manner continue to flourish. A study of the complaints received by NHRC shows that most of the victims of torture belong to poor and deprived classes. NHRC is also trying to closely monitor cases of custodial death and rape all over the country and asking the State governments to take corrective measures including stringent action against the aberrant staff.

India's accession to the Convention against Torture will be a step in the right direction and affirmation of the country's determination to do away with torture. This step will also send correct signals to the public servants, and particularly to the members of the police and security forces, not to transgress laws and rules of international conventions. The failure of the government to accede to the Convention has only provided a convenient handle to India's critics in international fora to severely indict it.

The Government of India has recently decided to accede to the Convention.

3

UNITED NATIONS' ROLE IN IMPLEMENTATION OF HUMAN RIGHTS

Today we are witnessing some kind of an incremental growth in the human rights movement all over the world. Important changes in the international scene like disintigration of the Soviet Union and ending of the cold war have given a fillip to the worldwide movement for observance of and respect for human rights. Human rights has become the normative political language of the present age. Human rights are based on mankind's demand for a life in which inherent dignity and worth of a human being will receive respect and protection. These rights apply to everyone from the fact of being human, irrespective of race, sex, occupation, material status or other characteristics. They are the essential liberties taken for granted as the basis for a just and civilised society and are not subjected to political bargaining or calculation of social interests.

In Western countries, international human rights initiatives were preceded by struggle for advancement of individual civil and political rights. The English Magna Carta and Bill of Rights, the French Declaration of the Rights of Man (1789) and the American

Declaration of Independence (1776) which announced that, "We hold this truth to be self-evident that all men are created equal" significantly contributed to the Western traditions of individual and civil rights. But it was only after the First World War that the Versailles Treaty (1919) created permanent mechanisms for international supervision of violation of human rights. The 1919 Treaty set up a mandate system for governing territories taken from the German and Ottoman Empires. Administering powers accepted as a 'sacred trust', the responsibility for the well-being of the people placed under their charge. A Permanent Mandates Commission was set up and the individuals could petition to the League of Nations through the Permanent Mandates Commission to redress their grievances. For the first time some nation states became accountable to an international body for mistreatment of individuals subjected to their rule.

In states separated from the German and Ottoman Empires like Yugoslavia, Greece, Romania, Czechoslovakia, it was decided to provide through 'minorities treaties' essential human rights to the minorities of these states. A supervisory machinery was also set up. The instrument guaranteed 'protection of life and liberty', equality of civil and political rights and free use of the mother tongue. To enforce their rights the minorities could petition the League Council directly. The Covenant of the League of Nations, however, did not include any general reference to human rights. Thus international effort to protect and enforce human rights before the Second World War were tentative and sporadic and involved only a few target states and narrow groups of rights. Inherent weaknesses of this patchwork system created by the League of Nations were exposed by Hitler's sinister acts of aggression. Hitler occupied Czechoslovakia with the ostensible plea of protecting the German minority of that state.

SECOND WORLD WAR

The Second World War, witnessed not only tremendous loss of lives and properties but ruthless degradation of human rights. Supression of religious and ethnic groups and minorities shocked the conscience of the civilised world. The harrowing experience of the Second World War gave rise to the conviction that effective international protection of human rights is one of the essential conditions of international peace and progress. The United Nations, which arose like a phoenix out of the ashes of the Second World War put utmost stress on promotion and fostering of human rights and basic freedom. The concern of the United Nations with the promotion and protection of human rights stems directly from the realization by the international community that recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the "foundation of freedom, justice and peace in the world."

Even during the continuance of the Second World War the Allied powers started planning for a new stronger international organisation. The United States, United Kingdom, U.S.S.R. and later on China, met to plan a post-war international security organisation. Initially, none of the organisation's general purposes referred to human rights. In 1945, the Big Four sponsoring states invited the other states to discuss the Dumbarton Oaks proposals at a conference at San Fancisco. The San Francisco deliberations which culminated in the adoption of the U.N. Charter made promotion of human rights one of the main functions of the international organisation and a specific responsibility of the General assembly and the Economic and Social Council (ECOSOC). The sponsoring powers also recommended a special commission under ECOSOC for the promotion of human rights.

U.N. CHARTER

The preamble of the U.N. Charter re-affirmed “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”, The purpose of the United Nations are listed in Article 1 of the Charter of which the third paragraph reads: “To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” The promotion and encouragement for human rights is an undertaking to be carried out for all. Human rights are thus universal and all-inclusive. The provisions in the Charter also place emphasis on equality or non-discrimination which is closely linked with the concept of universality. Indeed they mutually reinforce each other. Article 55 of the Charter provides:

> “With a view to the creation of conditions of stability and well-being which are necessary

> for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote : ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

INTERNATIONAL BILL OF HUMAN RIGHTS

The Charter of the United Nations does not further define the contents of human rights. The framers of the Charter left this task to the organisation itself, and it was decided for this purpose that an International Bill of Human Rights should be drawn up.

The International Bill of Human Rights comprises (a) Universal Declaration of Human Rights (1948), (b) International Covenant on Economic, Social and Cultural Rights (1966), (c) International Covenant on Civil and Political Rights and (d) Optional Protocol, thereon providing for the right of the individual petition. They form the four constituent parts of the International Bill of Human Rights and these texts can be considered as authoritative interpretation of the human rights clauses of the Charter of the United Nations.

UNIVERSAL DECLARATION

A little before midnight on December 10, 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in Paris. Mrs. Eleanor Roosevelt, who chaired the session, expressed the hope that the Declaration would become the 'Magna Carta' of all mankind. The

Universal Declaration of Human Rights is a milestone in the history of the human rights movement. The international community now accepted the obligation that promotion and protection of human rights becomes one of its permanent obligations and abiding concerns. It is now recognized that the Universal Declaration has become a part of the customary international law because of its unanimous adoption by the General Assembly without a single dissenting vote and its repeated affirmation in many subsequent resolutions of the General Assembly. Many members states have incorporated in their constitutions many of the provisions of the Universal Declaration of Human Rights.

Lauterpacht in his book "Manual of International Law" has said "it is idle to attempt to kindle sparks of legal vitality in Universal Declaration by regarding it as a recommendation of the General Assembly and by enquiry into its legal effects as such." The Declaration has today become a part of the customary international law because of the emergence of juridical consensus. Whatever be the intention of its authors in 1948, it has now become binding as a part of the law of nations. The General Assembly adopted a Declaration on the granting of Independence to Colonial Countries and People, in 1960. The final paragraph of the Declarations mentioned that "all states shall observe faithfully and strictly the provisions of the Universal Declaration of Human Rights". Again, on 4th December, 1963, the Security Council adopted a resolution which speaks of apartheid as being "in violation of South Africa's obligation as a member of the United Nations and of the provisions of the

Universal Declaration of Human Rights." The Security Council was obviously using the Declaration to interpret the Charter.

The Universal Declaration of Human Rights consists of a preamble and 30 articles setting forth the basic human rights and fundamental freedom to which all men and women everywhere in the world are entitled without discrimination. The Universal Declaration of Human Rights indicates two sets of rights–the traditional civil and political rights (Articles 2 to 21) and the new economic and social rights (Articles 22 to 28). The Constitution of India incorporates the first set of rights under the Fundamental rights (Articles 12 to 35 of the Constitution) and the second set under Directive Principles (Articles 36 to 51). The Fundamental Rights incorporated in Part III of the Constitution had been described by Dr. S. Radhakrishnan as 'a pledge to our people and a pact with the civilised world.' Article 13(2) of the Constitution declares 'all laws and executive orders inconsistent with fundamental rights to be ultravires and void.'

CATEGORIES OF HUMAN RIGHTS

Human Rights can be classified into various categories. The current distinction is between civil and political rights on one hand and economic, social and cultural rights on the other. The Universal Declaration of Human Rights comprises in one major document both these categories of human rights. However, these two major categories of human rights were incorporated in the two International Covenants on Civil and Political rights and on Economic, Social and

Cultural rights. There was a rationale behind these classifications. It was felt that while one set of rights was subject to immediate application, the other set required progressive realization. Therefore different implementation measures are called for. However, a very rigid demarcation between these two sets of rights cannot be made. Indeed, human rights are interdependent and indivisible. The Declaration on the Right to Development, 1986, states "All human rights and fundamental freedom are indivisible and interdependent, Equal attention and urgent consideration should be given to implementation and protection and promotion of civil, political, economic, social and cultural rights."

Indeed, it is incorrect to think that some of the basic economic rights are mere claims or aspirations and are not human rights because they cannot be enforced. This kind of thinking suffers from the fallacy that negative rights which gather around our liberties are more important than positive rights that evolve from our needs. It should never be forgotten that poverty is one of the most potent causes of the violation of human rights. Justice Bhagwati speaking for the Supreme Court in the case of Francis Coralic Mullen has, by an expansive interpretation of Article 21 of the Constitution, incorporated the right of food, clothing and shelter in the expression 'life' in Article 21 of the Constitution. "The question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head."

The subsistence rights have been recognized in Article 25 of the Universal Declaration : 'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothes, housing, medical care and necessary social services.'

The Resolution which approved the Universal Declaration of Human Rights also decided that Covenants containing legal obligations to be assumed by states and measures for their implementation should be prepared. After a long history of preparation, the Covenants for Economic, Social and Cultural Rights (1966) and for Civil and Political Rights (1966) were eventually adopted and opened for signatures. These Covenants are international legal instruments. When member states ratify the covenants, they accept the obligation to give the force of law to the rights they proclaim.

GENERAL ASSEMBLY AND SUBSIDIARY BODIES

Under Article 13 of the United Nations Charter, one of the functions of the General Assembly is to initiate studies and make recommendations for the purpose of "promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedom of all without distinction as to race, sex, language or religion. "Since the adoption of the Universal Declaration of Human Rights in 1948, the General Assembly has adopted numerous declarations and conventions concentrating on human rights. They deal among other things with genocide, racial discrimination, apartheid, refugees, stateless persons, the rights of women, slavery, children, torture, disabled and mentally retarded persons etc.

ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY BODIES

Under Article 62 of the United Nations Charter, the Economic and Social Council may make "recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedom for all." Under Article 68, the Council "shall set up Commissions in economic and social fields for the protection of human rights." To assist it in dealing with matters relating to human rights, the Council has set up the Commission on Human Rights and the Commission on the Status of Women. The Commission on Human Rights, in turn has established a Sub-commission on Prevention of Discrimination and Protection of Minorities. The Council has also, on occasions, authorised the Secretary General to appoint Special Rapporteurs or committees of experts to prepare reports on technical subjects.

COMMISSION ON HUMAN RIGHTS

The Commission on Human Rights was set up by the Economic and Social Council of the United Nations in 1946 and has met annually since then. It is the main body of the United Nations dealing with human rights issues. The Commission, originally made up of 18 members, was responsible for drafting the International Bill of Human Rights. Now it is composed of the representatives of 43 member states elected for a 3 year term. They only comprise the Commission and have a right to vote. The Commission may also invite any state for participating in deliberations on matters which are of concern to that particular state. The Commission may ask specialized agencies and some other inter-governmental and also non-governmental organizations to participate in the Commission's deliberations on matters which are of concern to them. The Commission makes studies, prepare recommendations, drafts International instruments relating to human rights. It also performs special tasks assigned to it by the General Assembly and the Economic and Social Council, including investigation into allegations concerning human rights. It cooperates closely with other bodies of the United Nations which are also dealing with the various issues of human rights.

The Commission has established a number of subsidiary bodies including a Sub-Commission on Prevention of Discrimination and Protection and Education of Minorities. It has also set up organs investigating human rights problems in specific countries and regions as well as on thematic situations. Some of these groups are (a) Ad hoc working group of experts on South Africa, (b) Working group to examine situations which appear to reveal a consistent pattern of gross violation of human rights, (c) the Working Group on involuntary disappearance and (d) the Working Group of Experts on the Right to Development. It has also set up such fact-finding bodies of experts consisting of rapporteurs to study the situation of human rights in specific countries such as in Afghanistan, Chile, Iran, Gautemala or on thematic situations such as Arbitrary Executions, Religious Intolerance, Massive Exoduses and Mercenaries etc.

HUMAN RIGHTS COMMITTEE

An optional protocol adjunct to the Covenant on Civil and Political Rights establishes a Human Rights Committee to receive communications from the individuals who claim to be victims of violation of human rights. This committee is the main rights body of the U.N. examining every year about thousands of complaints concerning violations of human rights. It holds open dialogues with governments on human rights abuses and has been able to provide help and succour to the victims in many cases. Several countries have changed their rules and laws as a result of the decisions by the Committee on individual complaints under the optional protocol. In a number of cases prisoners have been released and compensation paid to the victims of human rights violations as a result of intervention by the Committee.

The Human Rights Committee works by consensus, but individual members can go on to record their separate views on the merits of a case. This has happened on a number of occasions. From the latter part of 1980, due to greater public awareness of the Human Rights Committee's role, the number of complaints received from the individuals regarding violation of human rights has sharply increased. In all, about 2585 communications from individuals involving 33 state parties have been examined by 1991.

A state may submit communications before the committee alleging that another state is not fulfilling its obligations under the Covenant, but this can happen in cases where both the parties have communicated that they recognize the Committee's right to receive and consider such communications. On 31st December, 1990, 30 state parties had made similar declarations. The Human Rights Committee, unlike the European Court of Human Rights and the European Commission on Human Rights, is neither a court nor a body with quasi-judicial mandate. Its opinions expressed in the language of courts are known as "views" and not "judgements." As the number of states which ratify the Covenant and optional protocol grows, the influence of the Human Rights Committee will become universal.

COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION

This Committee was established in 1970, in accordance with Article 8 of the International Convention on the Elimination of all forms of Racial Discrimination. It consists of 18 experts of proven moral standing and acknowledged impartiality. Members are elected for a 4-year term by secret ballot at a meeting of the state parties and serve in their personal capacity. The Committee comments on situations involving racial discrimination or draws the attention of the General Assembly to such situations. It indicates issues on which it would like to receive further detailed communications from different states parties. By the end of 1987, there were 124 state parties to the International Convention on Elimination of all Forms of Racial Discrimination of which 12 had also recognized its competence to receive and consider communications from individuals or groups of individuals.

The General Assembly on December 9, 1975, adopted the Declaration on Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Article 2 declares torture as an "offence" against human dignity and as a "violation of human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights." The States are prohibited to "permit or tolerate" torture even in exceptional circumstances such as a state of war or a threat or war, internal political instability or any other public emergency and are obligated to take effective measures against torture. Article 5 lays down comprehensive training of law-enforcement officials against torture. Article 6 requires a system of review of the interrogation methods and practices as well as custodial arrangements.

The Declaration was followed on December 10, 1984, by a Convention which lays down more elaborate provisions. Unfortunately, India has not so far ratified the Convention. The Chairman of the National Human Rights Commission in a letter to the Prime Minister, has written that India should immediately ratify the Convention and give effect to its extremely humane and well-worked out norms. The letter says "the greatest tribute that the Republic of India can pay to the Father of the Nation, the apostle of peace, would certainly be our acceptance of the Convention against Torture."

This Committee against Torture was established in 1987 in accordance with Article 17 of the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment. It consists of 10 experts of impeccable moral standing and recognized competence in the field of human rights selected by the states parties to the Convention from among its nationals. Members are elected for a 4-year term and serve in their personal capacity.

The Committee studies reports on the measures taken by the state parties to give effect to their undertakings under the Convention and makes confidential enquiries if warranted concerning indications that torture is being systematically practised in the territory of a state party. It performs certain other functions with a view to resolving disputes between the states parties concerning the Convention. By the end of 1987, there were 27 states parties to the Convention against Torture and 10 of which had accepted the competence of the Committee against Torture under Article 21 and 22 of the Convention to consider matters relating to interstate disputes and communications from or on behalf of individuals.

THE CENTRE FOR HUMAN RIGHTS

The Centre for Human Rights located in the Unites Nations office at Geneva is the Secretariat unit of the United Nations mostly concerned with human rights questions. It is headed by the Under-Secretary General For Human Rights who is also the Director General of the UN Office at Geneva. It serves as the focal point of the United Nations in the field of human rights and provides secretariat and substantive services to the United Nations organizations concerned with human rights. It also collects and disseminates information, prepares publications and coordinates liaison with non-governmental organizations, external institutions and the media on human rights.

ROLE OF INDIA

India as a member of the Commission of Human Rights played a prominent role in the drafting of the Universal Declaration of Human Rights and took an active and effective part in the discussions prior to the framing of the Universal Declaration. Later on, many of the Articles of the Universal Declaration were incorporated in the Indian Constitution in the form of Fundamental Rights (Part III) and Directive Principles (Part IV). India also ratified the two international Covenants on Civil and Political rights, and Economic, Social and Cultural rights. However, at the time of ratifying the International Covenant on Civil and Political rights, the Government of India made certain reservations to the rights and freedom such as, the right to compensation for human rights violations.

India is also an active member of the United Nations Committee on the Prevention of Crime and Treatment of Offenders which formulated several Criminal Justice Administration (CJA) standards. The United Nations Standard Minimum Rules for Administration or Juvenile Justice (The Beijing Rules) have been adopted by the General Assembly in 1985. These have been substantially embodied in India in the Juvenile Justice Act, 1986. But many of the Committee's standards are yet to be adopted by law or State practice in India. One of the most prominent among these is the Caracas Declaration on Basic Principles of Justice for the Victims of Crime and Abuse of Power adopted by the General Assembly on November 29, 1985. The Declaration obligates the Governments to define the laws "proscribing the criminal abuse of power." India, unfortunately, has no self-contained legislation on behaviour or conduct which amounts to Criminal Abuse of Power. The Declaration also prescribes access to justice and fair treatment and rights to restitution and compensation for the victims of crime. The Declaration lays down that when the compensation is not fully available from the offenders or other sources, the State should try to provide financial compensation to the victims or their families through national funds created by the Government.

Besides, the Convention against torture, India has not ratified the following international instruments.

(a) Convention on the Rights of the Migrant workers;

(b) Optional Protocol to the International Covenant on Civil and Political rights; and

(c) Second optional Protocol aimed at the abolition of the death penalty.

The Covenant on Civil and Political rights made as many as 7 rights and freedom non-derogable even during a state of emergency. These are (a) right of life (Article 6); (b) freedom from torture or punishment (Article 7), freedom from slavery (Article 8), freedom of thought, conscience and religion (Article 18), prohibition of ex-post facto criminal liability (Article

15). However, Article 359(1) of the Constitution only makes two rights and freedom non-derogable, protection in respect of conviction (Article 20) and protection of life and personal liberty (Article 21).

UN's ROLE IN DEVELOPING HUMAN RIGHTS CONSCIOUSNESS

The United Nations has played a great role in developing human rights consciousness. It can be said that internationalisation of human rights began with the emergence of the United Nations. Today the message of human rights has spread and inspired people all over the world, and human rights jurisprudence is becoming an important component of any civilised legal system. Violations of human rights have become the legitimate concern of the international community. Warren Christopher, former American Secretary of State, told the open session of the World Conference of U.N. Human Rights in Vienna in 1993 "that each of us comes from different quarters absolves none of us from the obligation to comply with the Universal Declaration of Human Rights. Torture, rape, racism, ethnic cleansing, political disappearance are not tolerated by any culture or religion nor can it be justified by the demands of economic development or political expediency."

The final Vienna document outlined a wide range of human rights issues which are of concern to the international community. The Vienna document restated some fundamental and essential concepts in the approach to human rights, viz. an endorsement of the principles of universality, objectivity and non-selectivity. It stressed that democracy, development and respect for human rights are inter-dependent and mutually re-inforcing. It affirmed that States are duty-bound to ensure that education is aimed at strengthening respect for human rights. An Action Programme to improve the channel of human rights was adopted. The Vienna Declaration called on the U.N. and its relevant bodies to proclaim "UN Decade for Human Rights" for promoting and proclaiming these rights. The Declaration clearly stated that one of the main causes of violation of human rights is the phenomenon of terrorism and the external forces which back it.

IMPLEMENTATION OF HUMAN RIGHTS

There is no gainsaying the fact that the implementation of human rights enunciated in the Universal Declaration and various other international Covenants have to be done with much greater vigour and dynamism than at present. Human Rights will remain paper promises unless they are firmly implemented. Implementation procedures in the two great international Covenants are hardly adequate. They do not provide any system of adjudicatory control and enforcement. With the slow and steady crystallization of human rights into substantive international law, it has become necessary to develop adjectival international law for implementation of such substantive law.

The desirability of a measure of international control is implicit in the very solemnity attached to the Universal Declaration and other international covenants. On the other hand, there is always a fear on the part of states of the loss of certain amount of sovereignty by submitting to international control. There is also the question whether a world organisation can adequately deal with human rights problems arising in a state with its own distinct and peculiar tradition and culture. A time thus has now come to think of a new Human Rights Council with greater powers and responsibilities. It can sub-divide itself into regional councils which will be competent to enquire into individual complaints and submit reports for further action to be taken to resolve the disputes. Different regions, particularly, poor and backward ones, have different problems of human rights. The unfortunate fact remains that some of the advanced countries who loudly champion the cause of human rights and freedom do not hesitate to engineer wars in developing countries in the name of democracy and freedom. For this reason, different regional bodies and regional councils are necessary for implementing international covenants. To some extent, the European Commission of Human Rights and the European Human Rights Court may serve as models for other regional bodies.

It is a fact that the European Commission and the European Court of Human Rights set up under the European Convention of Human Rights, 1950, have made a note worthy contribution to the human rights jurisprudence and granted relief to several individuals against their governments. In the case of Neumeister against Austria, the court held that Neumeister had been detained for an excessive period before trial and hence there was violation of Article 5(3) of the Convention, which guarantees a right to trial within a reasonable time. In the so-called

"Vagrancy" cases against Belgium, the court concluded that there was breach of the Convention because the applicants had no remedy open to them before any tribunal for questioning the decision ordering their detention. In the Interstate case brought by the Republic of Ireland against the U.K., the court held that the techniques of interrogation of prisoners in Northern Ireland amounted to inhuman and degrading treatment. Consequently, they were discontinued. Certain provisions of the U.K. 'Prevention of Terrorism Act' which permitted detenus to be kept in custody for a period of seven days before their production in court was taken up for consideration. The court held that they are not in conformity with Article 5(3) of the Convention which guarantees that detenus should be brought promptly before a judicial tribunal.

Without effective implementation, guarantees of Human Rights in Constitutions and international instruments will remain only as pious promises, which will not satisfy the hungry and impoverished millions of human beings. Widespread poverty among the masses in developing countries is a great cause of denial of human rights. Poverty destroys human dignity and without human dignity there can be no human rights or the capacity to fight against the denial of human rights.

Further, the problems of human rights in the countries of Asia and Africa are quite different from that in the West. In Western countries, the role of human rights is to fine-tune the administrative and judicial system and fortify rights and freedom that are largely uncontroversial. "In countries of Asia and Africa, on the other hand, human rights have a transformative potential. They are a constant challenge to vested interests and authority in societies riven by enormous disparities of wealth and power, with traditions of authoritarianism and the helplessness of disadvantaged communities, of militarisation and the conjunction of corrupt politicians and predatory domestic and international capital."*

It is, therefore, imperative to strengthen movements for effective implementation of human rights in developing countries. For effective implementation what is most needed is the development of a strong, sensitive international human rights conscience, which resolutely acts upon the belief that human rights are indivisible and their protection is the abiding responsibility of the civilised international community. Human rights conscientisation should be the first item in the agenda of any successful human rights movement.

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*Yash Ghai, "The Asian Perspective on Human Rights." Faculty of Law, University of Hongkong. This paper was presented by the author at the Commonwealth Legal Education Conference on "Economic Policies, Human Rights and the Legal Order", held at Bangalore on June 4-6, 1993.

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HUMAN RIGHTS IN DEVELOPING COUNTRIES

The world conference on Human Rights in Vienna, in June, 1993, adopted unanimously the Vienna Declaration and Programme of Action. Indeed Vienna Declaration is not only a Declaration or enunciation of principles but also asserts a programme of action. It asserts that protection and promotion of human rights is the first responsibility of the government and calls for increased cooperation and coordination in support of human rights within the U.N. system. The Declaration emphatically states that all human rights are "Universal, indivisible and interrelated". It represents, in the words of Kevin Boyle, ('Stocktaking on Human Rights'. 'Politics and Human Rights' edited by David Beetham) "an admittedly uneasy global consensus on core human rights principles and at least an outline of the priorities of action to implement that consensus".

The Declaration stressed that economic and social rights are as important as civil and political rights. Disparity between two sets of rights was acknowledged by the U.N. Committee on Economic, Social and Cultural Rights itself in its statement to the Vienna World Conference: "The shocking reality is that despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, more patently intolerable than massive and direct denials of economic, social and cultural rights". Indeed the acceptance at Vienna by the developed countries of the importance and validity of social and economic rights and interdependence of these rights with civil and political freedom represents a positive gain from the aftermath of the cold war.

The concept of universality of human rights caused sharp differences of opinion among the States in the preparatory meetings and at the plenary sessions in Vienna. The head of the Chinese delegation, Lien Huapiu in his speech at the Vienna conference stated "one should not and cannot think the human rights standards and models of certain countries as the only proper ones and demand that all countries comply with them. It is neither realistic nor workable to make international economic assistance or even international cooperation conditional on them". Earlier at the Bangkok regional conference (March, 1993) the same point was projected by the Iranian Deputy Foreign Minister. "The political predominance of the group of countries which is temporary by nature cannot provide a license for the imposition of a set of guidelines and norms for the behaviour of the entire international community, especially since these states do not present an ideal, feasible or practical model in theory or practice, nor do they possess admirable pasts". (Statement of Dr. Mohammed Javad Zarif, Asian Regional Meeting on Human Rights, Bangkok, 31 March, 1993).

Now the most strident challenge to the concept of Universality of human rights has come from the highly dynamic-growth countries of South East Asia. The nub of Asian criticism of Western concept of human rights is that developed countries of the West are seeking to impose Western values on non-western societies with different moral standards and social traditions—an act of moral and cultural imperialism. Further, the West is using human rights as a stalkinghorse to achieve economic domination over the poorer world. Therefore, while all governments should uphold human rights, each individual country should be allowed to interpret and implement the goal according to its own circumstances. It is, therefore, unfair for the West, whose concepts of human rights, developed over centuries within its political and historical context, to expect that unstable and undeveloped countries should guarantee a broad range of individual freedom like western countries. The problem of this sequential approach is that often it becomes an alibi for authoritarianism and justification for violation of human rights by the authorities. In contrast to this sequential approach to human rights, others argue for concurrency and state that human rights, particularly civil liberties, do not endanger social and economic development or undermine nation-building. Protecting citizens from torture by State authorities or imprisonment without trial, permitting freedom of worship, are not incompatible with economic development. Indeed, preservation of these rights will strengthen the legitimacy of the government and encourage hard work among the people. Historical experience further shows that economic and social rights themselves cannot be guaranteed over time if people have no say over the formulation and implementation of those policies and denial of information over the effects of those policies.

The Vienna Declaration tried to set at rest the debate between the primacy of civil and political rights on one hand and economic and social rights on the other. It categorically states that human rights are universal, indivisible, interdependent and interrelated. One of the criticisms voiced against Universal Declaration of Human Rights is that it lays greater emphasis on civil and political rights than on economic, social and cultural rights. The balance of Declaration, according to critics is somewhat upset, "because it does not properly examine social, economic and cultural rights. It is true that protection of social and economic rights compared to the protection of civil and political rights at both national and international level has been weak and irregular. Very often social and economic rights are considered as aspirational and non-justiciable. There is also fallacious thinking that negative rights which gather around our liberties are more important than positive rights that evolve from basic needs.

CONDITIONS IN THIRD WORLD COUNTRIES

Looking at condition, prevailing in Third World countries one has to admit that poverty indeed is one of the most potent causes of the violation of human rights in these countries. Poverty undermines human dignity and without human dignity there is no human rights. The Supreme Court in India by an expansive interpretation of Article 21 of the Constitution has laid down that the right to life guaranteed by article 21 means "right to live with dignity which, inter-alia, means right to shelter, health etc." Justice Bhagwati speaking for the Supreme Court in the case of Francis Coralic Mullen has by an expansive interpretation of Article 21 of the Constitution incorporated the right to food, clothing and shelter in the expression "life" in Article 21 of the Constitution. Thus some of the social and economic rights of the Directive Principles have been judicially incorporated within the realm of Fundamental rights.

NORTH SOUTH DIVIDE

The fact that rich countries of the world accounting for 20 percent of its population consume 80 percent of the world's resources tells its own tale and highlights the need to put a sharper focus on social and economic rights. The sombre picture of poverty, ignorance and misery in most countries of Asia, Africa and Latin America, aggravated by gaps in distributional equity, cannot be accepted in a world order believing in tenets of liberalism. Three quarters of all humanity who live in the developing countries are weighed down by poverty and under-development. It was aptly observed by Colonel Ignasius K Acheampong, former Head of State of Ghana, that "one man, one vote" is meaningless unless it is accompanied by the principle of "one man, one bread"[1]. However, man does not live by bread alone.

Unfortunately, aid received from developed countries is often tied-aid to be spent in rich donor countries. Aid conditionalities also create problems. Sometimes clauses in aid conditions (bilateral and multilateral) make aid a function of political performance. Criteria for measuring performance are unclear, yet the threat of reductions/interruptions/withdrawal remains. These uncertainties complicate the process of setting and attaining social objectives. Again not all donors set the same agenda. So recipient countries run the risk of satisfying some while upsetting others. There is a real need for donors to work among themselves to fix common conditions and criteria for measuring results.

RIGHT TO DEVELOPMENT

It has been strongly maintained by the developing countries that there should be greater emphasis on development and that the right to development to which paramount consideration is to be given is not merely a moral but a legal right. This right is very much essential to maintain world peace which is the prime objective of the U.N. It is guaranteed by Articles 1(3) and 55 of the U N Charter.

In this connection it may be mentioned that the Proclamation of Teheran issued after the International Conference on Human Rights held in Teheran in 1968 also emphasized the principle of indivisibility of human rights and pointed out that progress in this direction was dependent on sound and effective national and international policies of economic and social development". (Para 13). The ideas of the Teheran Conference had a profound impact on the Declaration on Social Progress and Development adopted by the U.N. General Assembly in 1969 proclaiming that "international peace and security on the one hand and social progress and, economic development on the other are closely interdependent and influence each other and it is of cardinal importance to "accelerate social and economic progress everywhere, thus contributing to international peace and solidarity".

In the UN Commission on Human Rights there have been sharp differences on the question of realization of social, economic and cultural rights. At the 33rd Session of the Commission in 1977, it was decided to ask the Secretary General to undertake a comprehensive study of the right to development. This study published subsequently in 1979 stated that there is a substantial body of principles based on UN Charter and International Bill of Human Rights and reinforced by a range of Declarations and Resolutions which show the existence of a Human Right to Development in international law.

The General Assembly of the United Nations did finally adopt a Declaration on Right to Development after many years of preparation in 1986. The Declaration states that the right to development is "an inalienable right by virtue of which every human person and all peoples are entitled to participate in and contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedom can be fully realized". The Declaration goes on to mention that the "human person is the central subject of development and should be an active participant and beneficiary of the right to development".

Though the Right to Development has now become a catchword and repeatedly embodied in a number of UN documents, the Western world views this with some amount of scepticism. It fears that this will cast responsibility on the developed countries to contribute to uplifting the standards of developing countries. There will be obligation on the part of 'haves' to help the 'have-nots'. Thus emphasis on development will involve criticisms of developed Western countries because it is mainly on them the question of turning this right to reality lies. There is also the apprehension on the part of developed countries that over-emphasis on the Right to Development might divert attention of the Third World States as well as UN organization on the need to respect and protect political and civil rights. Some developing countries, on the other hand, feel that there is not much point in placing emphasis on civil and political rights in a totally unequal world order. Civil and political rights are luxuries that can wait for higher level of economic development.

From the technical and economic standpoint, as pointed out by David Beetham in an illuminating article ('what future of Economic and Social Rights?" [2] a joint programme on the part of international Community and national governments to ensure that everybody's basic rights are met is an eminently practicable proposition. Many studies like the World Bank study of Basic Needs published in 1981 and UNDP Human Developments Reports from 1990 onwards go to show that basic needs of everyone in the world can be guaranteed within a decade or so without any high cost to the taxpayers in the developed world. Though funds required for implementation of such vast programmes will be substantial in absolute terms, they are small when expressed as a percentage of the GNP of the developed economies. The World

Bank study revealed that if developed Western countries were to fund about 50 percent of the cost, this will require only an increase in aid from 0.35 to 0.45 percent per annum of their GNP, if existing aids were progressively directed towards a basic needs programme [3].

However, the programme to meet basic needs, though feasible, may encounter many serious problems. The hard fact remains that prevalent international trade and financial system systematically favours the North at the expense of the South, especially those countries which are heavily dependent on the export of a few primary commodities. Though there is an on-going furious debate over the effects of structural adjustment programmes, it can be said without fear of contradiction that they have failed to protect the poorest of the developing countries from the harmful side-effects of adjustment.

Again, implementation of basic needs programme in developing countries is hampered by internal constraints. In many of these countries the privileged and entrenched groups remain more interested in prestige projects and military hardware than at meeting the basic needs of common people. A time has now come to press for making some social and economic rights enforceable in preference to the maximalist approach of covering all these rights. The interim Constitution of South Africa has included within the ambit of fundamental rights the 'right to education', the right of a child to "security, basic nutrition and basic health". There is need for adoption of an Optional Protocol to International Covenant on Economic Social and Cultural Rights (ICESCR). There should be mechanism for monitoring violation of these rights and provisions for individual complaints. The Vienna Conference endorsed the work of the Commission on Human Rights and the Economic, Social and Cultural Rights Committee in drafting such an optional protocol to ESCER Covenant, which would make possible to lodge complaints about violations of these rights to the ESCER Committee.

In developing countries of Asia and Africa and Latin America there are massive violations of human rights of disadvantaged groups and marginalised sections of the society etc. There are outrageous violations of civil and political rights as well as social and economic rights. The state is often the major culprit, but in many instances civil society which in many places is feudal in its outlook and approach, is the perpetrator of these violations in connivance with the State administration. However, despite these violations, the level of human rights consciousness because of grinding poverty and widespread illiteracy is low.

Thus in developing societies, human rights movement have a transformative potential. They constitute challenges to vested interests and oppressive systems that deny basic rights to the common people. They are tools in the building of a good society where the basic rights and freedoms of the people will be safeguarded.

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5

HUMAN RIGHTS EDUCATION

The first sentence of the preamble of the Universal Declaration of Human Rights states that recognition and respect for human rights is the "foundation of freedom, peace and justice in the world". Indeed, the denial of human rights is not only an individual or personal tragedy, but also creates conditions of social unrest and political turmoil and sow seeds of conflict between societies and nations. However, for proper implementation of human rights it is necessary for everyone to know about his or her own rights. There is always a close relationship between legislation, implementation and education. Indeed, know your rights is the message of the United Nations. Article 26(2) of the Universal Declaration of Human Rights says that education shall be directed for the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. This message is important because only the people who are aware of their rights can ensure that their rights will not be trampled on. Learning about one's own rights builds respect for the rights of others and gives confidence to assert them.

The general conference of the United Nations Educational, Scientific and Cultural Organization

(UNESCO) at its eighteenth session in Paris in 1974 (17 October to 23rd Nov) recommended that "education should be directed for the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the sake of peace". The document, further stated that education should stress the inadmissibility of recourse to war for the purpose of aggression or domination or use of force or violence for purpose of repression and bring every person to understand or assume his or her responsibilities for the maintenance of peace.

TEHERAN CONFERENCE, 1968

Earlier at the International Conference on Human Rights (1968) held in Teheran it was decided to call on States to ensure that all "means of education should be used to stimulate interest in the problems of human right in the changing world". The United Nations General Assembly resolved in the same year to take steps, according to the scholastic system of each State, to introduce and encourage principles proclaimed in the Universal Declaration of Human Rights and other Declarations. It urged on the teachers to draw attention of the students on every possible occasion to this growing role of the United Nations in fostering cooperative efforts for the promotion of social justice and human rights throughout the world.

Indeed UNESCO has played a very prominent role in the promotion of human rights education. The International Congress on the Teaching of Human

Rights (Vienna, 1978), UNESCO International Congress on Human Rights Teaching, Information and Documentation (Malta, 1987) dealt with principles and considerations that should guide the teaching of human rights.

Recommendations of these two conferences unequivocally mentioned that human rights teaching and education must aim at fostering an attitude of tolerance, respect and solidarity inherent in human rights, provide knowledge of human rights in both national and international dimensions and develop among the individuals awareness of the ways and means by which human rights can be translated into social and political reality at both national and international levels. Education should not only make the individual aware of his or her own rights but should also at the same time instil respect for the rights of others.

PLAN OF ACTION

The World Plan of Action adopted by the International Congress for Education and Democracy in Montreal (March, 1993) calls for global mobilisation of the resources from the family to the United Nations to educate individuals and groups about human rights so that inappropriate conduct leading to a denial of human rights will be changed. Learning is not an end in itself, but rather the means of ending violations of human rights and building a culture of peace based on democracy, development, tolerance and human respect.

The document "Plan of Action" by UNESCO further mentions that though the cold war has come to an end and walls have come down, the last decade of the twentieth century is witnessing the recurrence of most serious human rights violations caused by racism, xenophobia, sexism and religious intolerance. No less disturbing for the protection of human rights are the threats stemming from environmental degradation, from new biomedical technologies and from the scourge of HIV/Aids.

Against this sombre background one has to think and work out proper strategies for education of human rights. It is true that education cannot eliminate the conditions that cause massive violation of human rights and even affect human survival. There are various social, political and economic factors responsible for this. But education does indeed liberate the mind of the individual and provide him the capacity and motivation to act. Human rights implies universality. Education in human rights should make an individual conscious of the basic and inalienable rights of others, regardless of sex, language, religion and other social and economic conditions. It will enable them to become more responsible citizens not only of their own countries but of the world.

VIENNA CONFERENCE, 1993

Therefore, in today's changing world education for human rights is an imperative need–education that will liberate minds from the thraldom of obscurantism, bigotry and narrowness and nurture democratic values and promote a societal transformation based on human rights culture. This explains why the World Conference on Human Rights held at Vienna in 1993 reaffirmed that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education promotes respect for human rights and fundamental freedom. States must work out education programmes that promote tolerance and foster peace and understanding among the nations as well as different social, religious and ethnic groups.

There is an ongoing debate among the educationists and human rights activists about the manner of teaching human rights in schools and colleges. Some experts are of the view that human rights should be a study subject in the same way as mathematics, science and history and only in this way human rights topics can acquire due status in the curriculum. Other school is of the opinion that human rights contents should be included in every subject and thus it will pervade all school and college tasks. In the words of Jose Ayala Lasso, the former United Nations High Commissioner for Human Rights "the objective of all human rights educational activity should be to teach the common language of humanity. Human rights should not be one subject of education, but should permeate all aspects of education in all forms".

ILLITERACY PROBLEM

However, in many countries of Asia and Africa a vast majority of people are illiterate. Education on human rights cannot succeed to the fullest extent unless the level of literacy is satisfactorily raised. Article 45 of the Indian Constitution provides that the State shall endeavour to provide within a period of 10 years from the date of commencement of the Constitution free and compulsory education for all children until they complete the age of 14 years. Unfortunately, this constitutional mandate remains unrealized.

The Supreme Court in a recent decision (AIR 1993-Sc 2176 Unnikrishanan JP and other *V* State of Andhra Pradesh and Others) has held the view that Article 45 of the Constitution confers an enforceable fundamental right to education for all children until they complete the age of 14 years. It is heartening to find that Government of Tamilnadu has now passed a law providing for compulsory education for all children below 14 years. The National Human Rights Commission is pressing the Central and State Governments to translate into action this decision of the Supreme Court and make special efforts by mobilizing resources for providing compulsory education to all the children in the country below the age of 14 years. The chairperson of the National Human Rights Commission in a letter dated 11 January, 1996, addressed to the Presidents of the major political parties in India observed that despite the provisions of Article 45 of the Constitution, one incontrovertible fact that faced the nation is that the number of those who are illiterates in the country exceeded the entire country's population at the time of independence. This unfortunate factor retards the progress of the nation and exposes countless of our compatriots to frequent violations of their human rights.

Human Rights teaching on the other hand must be conditioned by the values and ethos of the society.

To be effective it must be patterned on the culture and genius of the society. In India there is a widespread impression that human rights is a western concept which is being imposed on us by western powers. This is an erroneous impression. Indeed, from ancient days human rights in various forms have been the cultural heritage of all mankind. In 1968, as a part of the contribution to International Human Rights year, the UNESCO brought out a publication "The Birthright of Man" which illustrates concepts of human rights from different cultural traditions and explained how the ideology of human rights is not exclusively Western in its origin. "In the final analysis", says an American author, "human rights is really about human dignity, a notion familiar to India's civilisation centuries before the West was even born". [1]

It is also desirable to teach human rights in terms of a web of inter-individual and societal duties. Rights are unlikely to be abused if explained in the mould of duties. If one performs his duty to respect the human rights of the other, human rights of the other automatically get respected. Mahatma Gandhi, the Father of the nation, laying stress on the importance of duty—consciousness said "I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world." From this one fundamental statement perhaps it is easy enough to define the duties of man and woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be an usurpation hardly worth-fighting for.

SIKRI COMMITTEE'S RECOMMENDATION

In India way back in 1980, the University Grants Commission set up a Committee under Mr. Justice S.M. Sikri to consider different ways and means for promoting human rights education in India. The Committee suggested different approaches at different levels of education. At schools and +2 levels human rights values could be best inculcated through stories, poems, biographies and similar other literature. School children should not be over-burdened with human rights teaching for the purpose of securing marks at the examinations. Emphasis should be on inculcating human rights values on their impressionable minds. For achieving this, human rights teaching should not remain confined to the open curriculum of the school. They must also find reflection in the 'hidden curriculum', in the creation of a school atmosphere that displays respect for human rights.

An important aim of human rights education for children at the elementary school stage should be to develop in their impressionable minds positive attitudes and values. This can be ensured by providing a democratic environment, enabling children to enjoy their rights and simultaneously learn to respect the rights of others. In our country it is very important to expose children at the early school stage to the concept of one world and Human Rights because many children for a variety of reasons do not go beyond the elementary level of schooling. A child at this stage is normally very energetic, curious as well as socially and morally conscious. Development of broader outlook and constructive attitudes formed in the middle and later childhood will enable children to grow into responsible and mature citizens with constant concern for human rights of other.

At the secondary school level, knowledge is to be presented more systematically and the students should be encouraged to develop some capacity for action. With greater intellectual maturity of the students there is scope for teaching the curriculum subjects in a more imaginative and interactive manner. Resources such as libraries, museums, press, cinema, television etc. should be exploited for conveying correctly the message of human rights.

The Sikri Committee was of the clear view that at college and university levels values and concepts of human rights can be taught through books and other lessons. The committee also felt that even graduate students in science, commerce, medicine should be exposed to certain perspectives of human rights, at least such aspects of human rights which are directly relevant to their discipline. At postgraduate level, the concerned departments of Political Science/ Law in selected universities should introduce a diploma course in human rights.

ADULT EDUCATION PROGRAMMES

Teaching of human rights in adult education programmes should have a practical orientation. Mere teaching the adults what constitutes human rights is not adequate. Adult education programmes should be utilized to stress among the adults, the need to defend human rights and fight against abuse of authority. In that context the practical value of adults organizing themselves in associations or groups should also be emphasized. Adult education programmes should also harp on the message that violations of human rights are frequent and rampant because the people are not active and vigilant. Denial of human rights even to one person should be a matter of concern for the entire community. Indeed, eternal vigilance is the price of liberty.

Unfortunately, it is seen that text books vary from State to State. Contents in many text books negate the basic concepts of human rights and dignity. Text books used in schools in many parts of the country reflect communal, casteist, linguistic distortions and gender bias. There are materials used in some schools which are purposely designed to foster bigotry. Efforts at imparting proper human rights education to young and impressionable minds will fail if steps are not taken by the authorities to remove these distortions from the textbooks.

The National Human Rights Commission has been informed that the National Council of Educational Research and Training (NCERT) is now conducting a programme of text book evaluation, mainly of history books and in some States of language text books from the viewpoint of national integration. Under this programme caste, linguistic and gender biases and distortions noticed in the text books are identified and state educational authorities are advised to take steps to remove them. NCERT proposes to extend the scope of evaluation to other issues which are more directly specific to human rights.

METHODOLOGY

In devising teaching methodology, it has to be kept in mind that an educational course is effective if it is rooted in the concrete situations faced by the students. Every curriculum should take into account real-life issues and problems of the students concerned and examine them and suggest appropriate ways of dealing with them. Students should be encouraged to ponder over these issues and come out with their suggestions. This interactive or participatory mode of learning should become a part of the actual classroom pedagogy. Mere formal and theoretical instruction will not help in the sensitization of the students. For this purpose, co-curricular and extracurricular programmes like staging of plays and debates, essay competitions, seminars reflecting human rights problems have to be promoted. This will not only foster an awareness of human rights among the students, but will also motivate them to play a legitimate interventionist role in certain situations.

In any training or teaching programme, the role of the committed teacher/trainers is of crucial importance. Teachers are the pivots around which all education revolves. Any attempt to introduce human rights education in schools will not be successful unless teachers/educators are properly oriented. In the field of human rights teacher's own perception of human rights and commitments will count more than any well-prepared curriculum and elaborate guidelines. Unfortunately, teacher preparation is another major area of weakness. So far very little has been done to sensitize the teachers on human rights issues. In a paper titled 'Education for Human Rights and

Democracy in Indian Schools' presented by Dr. A. K. Sharma, Director NCERT, it was mentioned that there have been instances when teachers have expressed their reluctance to make available the text of the Convention on the Rights of the child to the students on the ground that it would create problems of indiscipline. Indeed teachers' attitude, style and responses will strengthen or undermine students commitment to human rights.

In this connection it has to be borne in mind that in the transference process of knowledge about human rights, teaching methods which emphasize a hierarchical and authoritarian relationship between teachers and students has to be discouraged. This kind of transference will be self-defeating and will distort the content of human rights. The form, as experts in the field of education state, 'transforms the content'. The manner in which the knowledge of human rights is imparted is interwoven with the essence of human rights content. An interactive approach which allows learners to pause and think over the underlying principles of human rights and imbibe them and reflect them in his work and conduct is needed.

MASS COMMUNICATION MEDIA

The mass communication media can play a very effective role in the advancement of human rights. Radio and television, if proper and thoughtful programmes are drawn up, can carry the message of human rights in every corner of the country and can shape and mould thinking of the people on human rights issues. They can serve as powerful instruments for advancement of human rights and conscientise the society against suppression and violation of human rights.

INITIATIVES OF NHRC

The National Human Rights Commission on its part has taken a number of steps to promote human rights awareness and spread human rights literacy in the country. This function of the Commission has been outlined in Section 12(h) of the Protection of Human Rights Act, 1993. In pursuance of this statutory responsibility, the Chairman of the Commission had written to the Vice Chancellors of all Universities proposing that the subject of human rights in all its dimensions may find clear place in the curriculum of the universities. Research, seminars and publications concerning human rights should be encouraged. The National Law School, Bangalore, is already a pioneer in the field. A number of universities have also responded positively. Universities like Burdwan, Dumka, Guwahati, Lucknow, Pune, Varanasi have all introduced courses on human rights.

The Commission has also been informed by the Department of Education that the subject of human rights can form part of the modules of social science courses run by the National Open School at the Secondary and Senior-Secondary level. The Commission is also in touch with the Indira Gandhi National University in regard to the launching of a programme on human rights using the distant education methodology.

The National Council for Education, Research and Training has published with the support of the

Commission a 'Source Book' on Human Rights. The purpose of the book is to make available to teachers and students, policy-makers and curriculum developers and other personnel involved in formulating and implementing educational programmes, a selection of major documents in human rights and human rights education in one volume. The NCERT will be shortly issuing the Hindi edition of the Source Book. NCERT also organized the first-ever national level training programme for key Resource Persons in Human Rights. About 40 participants including heads of Teachers Training Institutions, Principals of Teacher Training Colleges, heads of the Departments of Education from several academic institutions all over the country participated in this week-long programme. The Chairman and some Members of NHRC also addressed the conference.

At the instance of NHRC, the National Council of Teachers Education (NCTE) has prepared a project to train teacher–educators for both elementary and secondary level schools. The project is based on cascade model and aims at holding countrywide orientation camps. This in-service training programme is expected to cover about 25000 teacher–educators of the country. This will immensely facilitate teaching of human rights in schools.

The Ministry of Human Resources Development has informed NHRC that a 'Teachers Hand Book on Human Rights' is nearing finalization. It will be brought out soon after showing it to NHRC. It has also developed a school syllabus frame–work in which, besides informative details on human rights, topics on environmental hazards, gender issues, need for population control etc. will be incorporated.

In this connection it is necessary to reiterate that any Teachers Manual must adequately stress the fact that teachers themselves must demonstrate appreciation and understanding of human rights in their interactions with the students. Any human rights curriculum will fail to achieve its purpose if the teacher does not integrate the subject into his or her behaviour and attitudes. This is also necessary from the viewpoint of effective pedagogy.

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HUMAN RIGHTS AND EMERGENCY

In modern world every state faces abnormal situations caused by external aggression, internal rebellion, Civil Wars or economic or financial breakdown when it becomes impossible for the government to cope with it by adoption of normal constitutional measures. For dealing with such abnormal and extraordinary situations there are emergency provisions in the constitutions of several countries. But assumptions of extraordinary powers by the state often involve derogation of the civil and political rights of the citizens guaranteed by the Constitution during normal times. The European court of Human Rights has defined 'public emergency' as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community" (The Lawless case 1961 3 P.E.C.H.R. -Para 28).

Article 4 of the International Covenant on Civil and Political Rights (1966) lays down, "In times of Public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligation under the present covenant to the extent strictly required by the exigencies of the situation, provided such measures are not inconsistent with their other obligations under the international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion and social origin."

The European Convention on Human Rights, 1950 (ECHR) made only four such rights non-suspendable. The International Covenant on Political and Civil Rights (ICPCR) raised the number to seven, namely (1) Rights to life (Article 5), (2) Prohibition of Torture (Article 7), (3) Prohibition of slavery or servitude, (4) Prohibition of imprisonment for breach of contractual obligations (Article 11), (5) Prohibition of retroactive criminal law (Article 15), (6) Freedom of thought, conscience and religion (Article 18), (7) Recognition as a person before the law (Article 16). The fact that these non-derogable rights cannot be suspended even in times of public emergency for the asserted objective of safeguarding the life of the nation is of great significance. The American Convention on Human Rights (ACHR) (1969) has increased the number to eleven and includes (8) Rights of the Family (ACHR Article 17), (9) Rights of the Child (ACHR Article 19), (10) Rights to nationality (ACHR Article 20), (11) Rights to participate in the government. The minimum standards of human rights norms in a state of exception formulated by the Human Rights Committee of the International Law Association known as the Paris Minimum Standards list 16 non-suspendable rights. The category of non-derogable rights stems from the concept that some rights are inalienable so that they could not be taken away even when the existence of the state is at stake.

There are certain basic requirements that State of Emergency must meet in order to avoid adoption of measures that will have a negative impact on human rights. The International Law Association has highlighted some democratic control parameters of an emergency situation. First, the State of Emergency must be officially proclaimed. This implies that people must be informed that a State of Emergency has been proclaimed and must also be made aware of the types of limitations that have been imposed on their rights. This obligation of officially declaring a State of Emergency including obligation to fully inform the citizens is designed to avoid de facto State of Emergency. The second condition is the principle of legality. This principle demands that State of Emergency be declared and applied according to national and international rules that regulate it. It means that State of Emergency should be applied, according to constitutional law and jurisprudence of the country as well as treaties and convenants that protect human rights. It is also necessary that the crisis should be so grave as to pose a genuine threat to the structure and life of a society. Next comes the principle of temporality. It means that there should be a specific time-limit regarding the duration of emergency. Without this rule, the State of Emergency will continue indefinitely and limitation on people's human rights will acquire a permanent character. There are instances of perpetuation of the State of Emergency. This kind of violation could be noticed in Latin America during 1970-80. The most illustrative is the example of Paraguay which was under a state of Emergency without interruption from 1954 till 1988. Then there is the principle of proportionality which establishes that a relationship must exist between gravity of the crisis and the type of measures adopted to resolve it. Restrictions on people's rights must be proportionate to the circumstances of the situation. Without this principle, there will be excesses on the part of the authorities.

There are provisions for emergency in many Constitutions of the World. However, in written Constitutions of countries such as USA, Australia, Canada there are no specific emergency provisions. Nevertheless, judiciary by liberal interpretation of the provisions of the Constitutions have come to the aid of the executive. On the other hand, in the constitutions of countries like West Germany, there are elaborate provisions as regards war, emergency or "state of defence". State of defence means that federal territory of West Germany is either attacked by armed forces or such an attack is directly imminent. Article 16 of the French Constitution, 1958, also contains emergency provisions.

PROVISIONS IN INDIAN CONSTITUTION

Founding Fathers of the Indian Constitution were keenly aware of the need for conferring extraordinary powers on the government to deal with situations caused by war, external aggression or internal rebellion. Under Article 352 (1) of the Indian Constitution, the President can by proclamation declare emergency if he is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened by war or external aggression or armed rebellion. It should be mentioned in this connection that on the ground of 'internal disturbance' the then Prime Minister Smt. Indira Gandhi proclaimed second emergency on June 26, 1975. This was done on the plea that there was an organised campaign to subvert the lawful government by violence and to excite dissatisfaction amongst the police and armed forces. The Janata government which came to power after the election in 1977 were of the view that there would be an end of democracy in the country, if nonviolent political agitation, even with resort to civil disobedience movement, is throttled on grounds of internal disturbance and emergency imposed in the country on that plea. The 44th Amendment Act, 1978, amended Article 352 (1) by substituting the expression 'armed rebellion' for internal disturbance.

ARTICLE 359

Further, article 359 of the Constitution while suspending fundamental rights under part III during the Emergency provides that articles 20 and 21 shall not be suspended during the period of emergency. Thus rights to life and liberty (Article 21) and protection against double jeopardy, ex-post-facto laws and forced testimony against self (Article 20) have been protected even during the emergency. This protection which was earlier not available has now been provided by the 44th amendment of the Constitution.

Right to 'life and liberty' has been considerably expanded by the Supreme Court in its various landmark judgements. These rights now include the right to life with dignity, freedom from torture and arrest etc. The Supreme Court in the case of Francis Coralie Mullen *V* Union Territory of Delhi interpreted that the expression of 'right to life' as the right to live with dignity and all that goes with it, viz, bare necessaries of life such as food, clothing, shelter over the head etc. The states, according to the court, cannot deprive a person of the right to live with basic dignity. Hence torture, cruel and inhuman treatment which trenches on human dignity would not be permissible under article 21 of the constitution. Article 7 of the International Covenant on Civil and Political Rights is thus woven into the Constitutional jurisprudence of the country.

POSITION IN UK

In England, the executive have no emergency powers except under parliamentary authority. There is no prerogative of the crown to make a proclamation of emergency. The parliament, however, vests the executive with special emergency powers by passing such Acts as the Defence of the Realms Act 1940, Emergency Power Act 1939 etc. When the Parliament authorises some restrictions on liberties of the citizens, the individual has the right to go to the court of law if he feels that his rights have been violated without conforming to the laws passed by the Parliament. Nevertheless, it is impossible for the Parliament to cope with every possible emergency by detailed legislation. Parliament confers upon the executive authorities power to promulgate subsidiary legislation through rules and legislations. Vast powers and discretions can thus be exercised by the executive through such delegated authority.

Further, in the United Kingdom in Liversidge *v/s* Anderson (1942) AC 206 the House of Lords held that in an emergency legislation there was no scope for judicial review. The court had no jurisdiction to enquire into the reasonableness of an emergency power which was conferred by Parliament upon a Minister, who was responsible to it. But the court had the power, whenever there was an allegation of mala-fides, to find out if he acted in good faith. Lord Atkin in his dissenting opinion in the case expressed the view that the law of interpretation of statues does not differ in time of war. "In this country admidst clash of arms, the laws are not silent." In the case R.V. Halliday, the House of Lords, referred to the principle 'Salus Populi est Suprema lex' (safety of the people is the supreme law). This is the doctrine of "state necessity" which implies that an act which would be otherwise illegal becomes legal, if it is done bona fide under the stress of necessity.

In Ireland in the 'Lawless case', the European Court of Human Rights observed that emergency cannot be declared if an armed insurrection or disturbance is confined in a local area and has not spread over the rest of the country. In Indian Constitution Article 352 (1) provides that the President can make a proclamation of emergency in respect of a part of the country. Upto 1975, proclamation of emergency extended to the whole of India. The 42nd Amendment Act, 1976, made clear that when a disturbance or external aggression was confined to a particular area, a proclamation of emergency can be made in respect of that area without affecting the rest of the country. 42nd Amendment Act also provides that though emergency in such a case shall be confined to a particular area, there will be overriding powers of the Union Government to give direction to a State Govt. (Article 353(a)) or to make laws relating to a state subject (Article 353(b)) and this shall extend to states which are not covered in the proclamation of emergency. These provisions have been made to make emergency effective by curbing unwanted and undesirable activities in the adjoining areas.

In India the question of justiciability of proclamation of emergency has been agitated before the Supreme Court in a number of cases. The issue has been further complicated by intervening amendments of the constitution. It remains yet to be finally settled. In India the Supreme Court in the case of ADM Jabalpur *v/s* Shukla (1976 Sc 1207) held that when the proclamation of emergency was subsequently followed by an order under Article 359 (1), it totally barred the jurisdiction of the courts. So an order depriving a person of fundamental rights even on the grounds of mala-fides cannot be challenged. In the case of the state of Rajasthan *v/s* Union of India (A 1977, S.C. 136) the majority opinion was that the proclamation of emergency under Article 356 (1), though based upon the subjective satisfaction of the executive, can be challenged on the grounds that the proclamation was made on a consideration which is irrelevant to the purpose for which power has been granted under Article 356 of the Constitution, viz, breakdown of the constitutional machinery of the state. The same point was reiterated by the Supreme Court in the case of AK Roy *V* Union of India (1982 Sc 710).

In the case of S.R. Bommai vs. Union of India (1944 3SCC), the majority of the Judges held the view that judicial review of the proclamation under article 356 was permissible. But it is limited to examining whether there was any material or whether it was relevant and that it was not tainted by mala-fide, perverse or irrational exercise of power. The majority of the Judges also laid down that Article 42(2) of the Constitution is not a bar against the scrutiny of materials on the basis of which the President had arrived at his satisfaction. Article 74(2) bars an enquiry to the question whether any or if so what advice was tendered by the Council of Ministers to the President. The material on the basis of which the advice was tendered does not become part of the advice.

The proclamation under Article 356(1) is thus no longer immune from judicial review. The Supreme Court or the High Court can strike down the proclamation if it is found to be mala-fide or based on wholly irrelevant or extraneous grounds. The deletion of clause (5) (which was introduced by 38th amendment Act) by the 44th amendment Act removes the cloud on reviewability of action. When called on the Union Government has to produce the materials on the basis of which action was taken. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to whether the material was relevant to the action.

SECTION 2

7

DOWRY DEATHS - A NATIONAL SHAME

The Director General of Police, Orissa, finds himself in a tight spot. The Orissa High Court has quashed the circular issued by the DGP to all Police Officers directing them that in cases of dowry, torture or murder, the mother-in-law and the sister-in-law of the victim, if accused, be paraded to the court in handcuffs and with ropes tied round their waists. The circular was issued last year in response to similar views expressed by the then Chief Minister Shri Biju Patnaik at the annual meeting of the Collectors and the Superintendents of Police.

In its judgment the High Court has assailed the circular and described it as 'sadistic and capricious' and violative of article 19 of the Constitution. The court also expressed its disapproval of the Chief Minister's irresponsible views, but severely pilloried the D.G.P., who was trying to prove himself more "loyal than the king". Shri Biju Patnaik in righteous indignation must have expressed such unorthodox views. But a circular on similar lines sent by the DGP to the Police Station officers is likely to send wrong signals and unfold definite possibilities of gross abuse and misuse of authority by the sub-ordinate police staff.

The fact, however, cannot be gainsaid that the problem of dowry death has assumed alarming dimensions and socio—legal measures adopted so far have proved ineffective. Therefore, appropriate strategies have to be fashioned to arrest this spreading cancer. Nevertheless, it is also to be seen that proposed remedy does not prove worse than the disease.

DOWRY DEATH FIGURES

According to the figures compiled by the National Crime Records Bureau in the year 1992, 2102 cases were reported under the Dowry Prohibition Act as against 1841 cases in 1991 recording a 14.2 percent increase. Bihar, Uttar Pradesh, Tamilnadu, Karnataka reported the bulk of the cases. In 1987 there were 1912 cases of dowry deaths which jumped to 2157 in 1991 - an increase of 169 percent. Orissa, during the year 1992, reported 64 cases of dowry deaths and 175 cases of cruelty by husband and his relatives. However, these crime figures, as all senior police officers know, are suppressed figures which do not reveal the real state of affairs. A large number of cases go unregistered. Crimes against women constitute an important category of crimes in which for a variety of reasons there is massive under-reporting as well as burking.

The Dowry Prohibition Act was passed as early as in 1961 to combat the evils of dowry system. The passing of the Act, however, produced no tangible impact. Not a single case could be convicted under the Act in the entire country till the end of 1978. The Act defined dowry as property or valuable security given directly by one party to the other as 'consideration of marriage'. As the Act did not bar traditional giving of presents, it was found very difficult to prove that properties were given as "consideration for marriage". As the old Act proved ineffective, a new Act with more teeth was passed by the Parliament-Criminal Law Amendment Act 1983 to deal with the problem. It inserted a new section in the IPC, Section 498A to penalise the husband or relatives of the husband if they treat a woman in a cruel manner for which she is forced to commit suicide. A new section 113A was also inserted in the Indian Evidence Act to enable the court to presume that a woman has been tortured by the husband or relation of the husband to commit suicide if she committed suicide within a period of 7 years after marriage. The burden of proof shifts from the prosecution to the accused-a fundamental departure from the rules of Evidence Act. The offence was made cognisable giving police wider powers to directly investigate such cases. A new amendment of 174 CrPC made post-mortem examination compulsory where a woman committed suicide in suspicious circumstances within 7 years of her marriage. However, even after the passing of the new Act, dowry deaths continue unabated. Pathetic and shameful cases of torture and death of young brides pour in.

POLICE INVESTIGATION

It has been found that very often in dowry death cases, police investigation tend to be sloppy and full of loopholes. The Ministry of Home Affairs, Government of India, had earlier issued a circular containing detailed instruction for investigation into dowry-death cases. It stipulates that every case should be investigated by officers not below the rank of a Deputy Superintendent of Police. Unfortunately, due to the paucity of gazetted police officers this salutary instruction is followed more in breach. It is also a fact that very often direct evidence remains unavailable in such cases. In many of these cases neighbours who could have come forward to render valuable evidence in courts of law often do not want to get involved. Initial uproar in the neighbourhood immediately after the incident soon dies down. Some members of the family, though sympathetic to the bride, do not give clear evidence in order to maintain the prestige and honour of the family. Very often evidence is only circumstantial. As is well known, for bringing about conviction through circumstantial evidence, there should not be any flaw or omission in the chain of evidence.

In this connection, I still remember a case that occurred in Koraput district of Orissa. I was then posted as the Deputy Inspector General, Criminal Investigation Department. In this case, the accused was a school teacher who tortured and later on murdered his wife because the father of the girl could not fulfil the exorbitant dowry demands. This could be proved from the girl's letters to her father. Initially, the doctor had opined that the death was due to shock resulting from excessive burning. The deceased was not cremated as at that time she was carrying. The then Professor of Forensic Medicine and Toxicology of Medical College, Berhampur, was consulted and the body was distinterred according to his advice. After the second autopsy, he opined that death was caused by homicidal strangulation. The accused was convicted U/S 302/201 IPC relying on medical evidence, and the testimony of seized letters.

WOMEN POLICE OFFICERS

I strongly feel that more women officers are absolutely necessary for proper investigation of crimes against women. Unfortunately, the number of women police personnel in our country is inadequate and they too are available only in big cities and in the special wings of the CID. In India, out of the total strength of 877308 policemen the number of women police personnel is 7706, almost less than 1 percent. It is, therefore, imperative to substantially increase the number of women investigating officers in State police forces and give them proper and adequate training for sympathetically and supprotively handling women victims of ghastly crimes. The Supreme Court in the case of Shri Bhagwan *V* Commissioner of Police (commonly known as Delhi bride-burning case) recommended that a female police officer of sufficient rank and status in the police force should be associated with the investigation of such a case from its very inception. Very often this direction remains a pious wish.

CASE DISPOSAL

Moreover, there is often unfortunate delay in the disposal of cases involving crimes against women in the courts of law. From a sample study of 100 cases of crimes against women done by a study group of BPR&D, it could be found that in more than 50 percent of cases, completion of trials took more than one year and punishment imposed in many cases had been less than adequate. Justice S.M Agarwal, whose judgement in bride-burning case was later on set aside by the Delhi High Court, aptly said, that judges ought to be alive to their station in society and should provide intellectual leadership in their own field for creation of certain social norms and values. Therefore, "when confronted with a social crime like bride-burning, they should view the entire case in such a way that social justice is promoted rather than jacketed."

A speedy trial is also essential. The guilty should be punished while events are still fresh in public mind. Special Courts should be set up to ensure speedy trial of bride-burning cases. The Supreme Courts Judgement in cases of Kailash Kaur *V* State of Punjab (1987 Cr. L.J. 112 SC) should be kept in mind by all trial courts.

However, the Dowry Prohibition (Amendment) Act 1984, despite introduction of stringent measures in the dowry law, did not redeem the situation. In the amended act the words "as consideration for marriage" have been replaced with "in connection with marriage". One clear effect of the amendment is that now dowry is not demanded at the time of marriage. But immediately after the marriage is over, pressure is mounted on the parents of the bride to give valuables and properties. Again, in most of the dowry death cases it could be seen that parents do not keep a list of properties given at the time of marriage. Dowry laws should be further amended to include post-marriage dowry demands.

Another, suggestion is that within the purview of law, registration of marriages together with a list of gifts should be made compulsory. Provision must be made that any gifts made after the marriage should also be included in the list.

Dowry is a social scourge and public opinion has to be mobilised against this cancerous evil. It cannot be contained by only legal and police action. The memorable words of Mahatma Gandhi: 'acceptance of dowry is a disgrace for the youngman who accepts it as well as perhaps a dishonour for the woman folk' should ring in the ears of every unmarried youngman or woman. Unfortunately, even with the passage of time and spread of education, the cancer is showing no signs of abatement. The upas-tree has grown taller. As the Director of the National Police Academy, I had noted with dismay how young All India Service Officers shamelessly accept heavy dowries, throwing to the winds all other considerations. The nature of dowry has also undergone a change. No longer it is confined to clothes, utensils, and jewelery etc. Today the transaction is in lakhs of rupees with the demands ranging from investing money in the business to building a house for the boy etc. The fact that the educated and advanced groups of the society follow this hideous practice only bespeaks of society's moral degeneration. It is against this entrenched evil a moral crusade has to be launched. Women, particularly illiterate and downtrodden, have to be made aware of their legal rights. A legal literacy campaign among them has to be started. There should also be an aggressive movement to treat as social pariahs, those who are taking or giving dowry. Voluntary organizations can play a crucial role in this campaign.

It is true that often mother-in-law and sisters-in-law become instruments of torture of the brides. Answer, however, is not to manacle them even before their guilt is proved. Vigorous investigation and prosecution, realistic punishment of the offenders along with a determined re-awaking movement to curb the evil are required. There are no short-cut and flashy solutions of this deep-seated social malaise.

8

CUSTODIAL CRIMES

The incidents of police torture and brutality often hit the headlines in newspapers and expose police to severe criticisms from different sections of the society. Indeed nothing tarnishes the image of the police more than brutality directed against persons in their custody. Exposure of such incidents causes national and international concern.

Amnesty International in its reports has been frequently making allegations regarding excessive use of force and torture by the Police in India. In its report in the year 1992, it mentioned that the number of deaths in police custody in India during the year 1985 to 1991 was 415. Though many of the allegations in the Report of Amnesty International remain unsubstantiated, the complaints of custodial violence and abuse of power by the Police cannot be brushed aside. There is a ring of truth in them. Even the official statistics will go to show that the malady does exist. The charge of brutal custodial violence by the police, often resulting in the death of the arrestees, is not new. Though allegations of custodial violence by the police are now coming to notice with increasing frequency, it will be good to remember that the evil is not of recent origin. It was, though not widely publicised, very much prevalent in the past. The commission for investigation of alleged cases of torture in the Madras Presidency (commonly referred to as the Torture Commission) in its report (1850) highlighted that police torture was quite prevalent in the then Madras Presidency. The Indian Police Commission (1902-03) had also written that "a serious complaint against the police is the unnecessary severity with which they often discharge their duty and the unnecessary annoyances they inflict on the public." The National Police Commission also analysed the evils of custodial rape and violence and suggested a number of corrective measures. Figures compiled by the National Crime Records Bureau show that during the year 1990-92 as many as 258 rapes and 197 deaths in police custody were reported from all over the country.

The National Human Rights Commission immediately after its constitution issued instruction (14th December 1993) to all District Magistrates and Superintendents of Police to report any incident of custodial death or rape directly to the Commission within 24 hours of the occurrence. Failure to send such reports, it was emphasised, will lead to a presumption by the commission that an effort was being made to suppress the occurrence. In the year 1995, 105 deaths in police custody and 207 deaths in jail custody were reported before the Commission. During the year 1996, 201 deaths in police custody and 641 deaths in jail custody were also reported.

OTHER COUNTRIES

Of course, use of excessive force by the police against persons in custody is not peculiar to India alone. Such allegations against the police are frequently levelled also, though that should not give room for consolation or complacency, against police forces of advanced democratic countries. As early as in 1931, The National Crime Commission headed by Mr. George Wickersham, in the United States sharply criticized the police department for routine use of torture and third-degree methods. In 1966, the President's Commission on Law Enforcement and Administration of Justice came across several incidents in which the police used unnecessary force and violence. The recent incident of custodial violence of Los Angeles policemen against Rodney King resulted in large-scale riots in many cities in the USA.

Charges of custodial violence have also been levelled against the police in the United Kingdom including the famous Scotland Yard. Even before a Royal Commission printed its report on police behaviour in 1960, scandals began to occur that tarnished the pristine police image. A "rhino whip" was discovered in a Sheffield locker and a London detective, Harry Challoner, was dismissed for planting evidence. A well-organised "firm within a firm" was revealed to permeate the structure of the detectives in the Metropolitan Police reaching right upto the top, including the elite Flying Squad.

FEW SADISTS

Unfortunately, reports of police violence and brutality, received from various parts of the country, convey an impression that the police forces in our country are full of sadists and blood-thirsty maniacs who relish the sight of broken skulls and blinded eyes. But this prevalent impression is misleading. In my long years of service in the police, I have found that majority of police officers and men are not cruel sadists and do possess a certain degree of commitment and motivation which enable them to stand the stress and strain of their difficult and thankless job. Of course, there are some who, in the confines of the police stations or police barracks, do not hesitate to inflict unspeakable torture on the arrestees.

I remember a case when I was DIG CID in Orissa, of an Inspector of Orissa Police posted in Koraput district who brutally kicked to death in the police station a bright school boy when the latter at the time of interrogation, had the temerity to ask him that under which section of law he had the authority to misbehave or use third-degree methods during the investigation of a case. The Inspector's blood was up. He gave two hard kicks with his boots on the chest of the boy and two in his genitals. The poor boy gave a loud shriek and breathed his last. The Inspector then tried with the help of the police station staff to show it as a case of suicide by hanging the body from a nearby-by electric pole. The investigation done by the CID team sent from State Police Headquarters unravelled the truth. The Inspector was prosecuted u/s 302 IPC for murder. But the Sessions Judge in a mood of clemency exonerated the officer of the charge of murder and convicted him under section 323 IPC for causing hurt. But nemesis overtook him. He soon lost his life in a road accident.

Despite elaborate legal provisions fettering exercise of arbitrary authority by the police, and detailed instruction in the State Police Manuals prohibiting abuse of powers by police personnel while effecting arrests or interrogating suspects or accused at any stage of investigation of a case, many a police officer develops a feeling that he can get away with the worst forms of custodial violence because it will be very difficult to prove such a charge as none will come forward to give evidence. He also feels that his superiors and subordinates will rally round him and try to whitewash his omissions or commissions.

Custodial deaths thus generate more heat than light. Every such death is not probed into on systematic lines. The National Police Commission (1977) analysed complaints of police torture and custodial deaths in eight states and found that the police were blamed in 11 out of 17 judicial enquiries, 37 out of 82 magisterial enquiries and 23 out of 430 enquiries by other agencies. The National Police Commission recommended that in all cases of custodial deaths there should be mandatory judicial inquiries.

CAUSES

One of the causes of custodial deaths is the tremendous pressure on the police to detect cases whenever there is a surge in crime, and particularly heinous crime. Whenever crime increases, it is the police which is singled out for blame. The popular and prevalent notion is that efficiency or inefficiency of the police is the decisive factor behind any increase or reduction in crime. The fact is forgotten that crime is a result of various socio-economic factors over which the police have no control. Again the resources of the police–manpower, equipment and gadgets—are totally inadequate and they function under various legal impediments. The impact of the pressure is mostly felt at the subordinate levels who are required to deliver the goods in quick time. It is a curious anomaly that while law gives power to police officer to arrest anyone and keep him under custody for atleast 24 hours, it places unreasonable restrictions on the testimony of the police officers. Sections 161, 162, 164 of Cr. P.C. and Sections 25, 26, 27 of the Indian Evidence Act should be recast to remove shackles on police testimony. Section 162, CrPC provides that the maker of statement before the police is not to sign it. This frequently enables the witnesses to resile from the statements they have made before the police in courts of law. In England and in many other advanced democratic countries, statements before the police are generally signed and considerable importance is attached to them because it is difficult to confute such statements. Of course, judges, should always have discretionary powers to exclude evidence which, they think, has been unfairly or coercively obtained. Lord Devlin in 'Criminal Prosecution in England' has very aptly observed that "since the police force cannot be excluded altogether from the field of investigation, and since the worst thing of all is to have an irresponsible police force, is it not better to leave the police in sole charge of enquiry and to ensure that they act under a sense of responsibility to the Court for what they do?"

Under law the police can detain a person in custody for 24 hours. After that he is to be produced before the magistrate. Very often, the court does not grant any further police custody. If a notorious criminal is quickly bailed out, it is difficult to trace him out again. To circumvent the law, a new procedure is being increasingly adopted by the police whereby a suspect is being picked up and detained for many days. No permission is sought from the court and no information is given to the relatives regarding the whereabouts of the detainee. Even if the detainee dies, the police do not own responsibility as there is no evidence to show that he died in police custody.

The stark fact also cannot be gainsaid that there is some amount of double-thinking and double-speaking over the issue. Even enlightened members of the society expect police to take "tough action" not sanctioned by law against anti-social elements who are escaping conviction and getting away scot-free because of the malfunctioning of the criminal justice system. I recollect that in a case of gruesome double murder which created consternation in Cuttack, a responsible political leader suggested to me to utilise all kinds of techniques known to a police officer to elicit information from the suspect. I had to discourage him by explaining its implications. Unfortunately, many officers opt for short-cut, rough-and-ready methods for quick results. Subordinate officers who are entrusted with the job of applying third-degree methods overdo it. Custodial deaths often occur not because of any intention to kill the victim, but as a result of excessive torture or when, quite unknowingly, the officer injures some weak organ in the victim's anatomy.

Again it is important to remember that such abuses of police can flourish not only because of official negligence or acquiescence but because, rightly or wrongly, broad sections of people under certain conditions and circumstances feel that the police, in spite of their excesses, are carrying out a necessary and unpleasant task for preserving and protecting state and society. Such conditions place considerable moral burdens on conscientious police officials whose actions to check drifts of this kind are of paramount importance. A perceptive writer on Police Psychology, Ben Whitaker ('Police') has observed, the public "Janus-like have always turned two faces towards a policeman." Because of incompatible demands of the public, some policemen become stoically immune to criticism.

PRESSURE OF THE JOB

It is a fact that officers of police stations who do most of the investigations are a hard-pressed, hard-worked and beleaguered lot. An analysis of the National Police Commission shows that an investigating officer is able to devote only 37 percent of his time in investigational work while the rest of his time is taken up by other duties connected with maintenance of V.I.P. bandobust, petition enquiries, court attendance etc. The result is farewell to open and painstaking investigation and dependence on short-cut, extra-legal methods and torture. For success of thorough investigation permitted under laws and rules an increase of the investigation staff and separation of the law and order and investigation staff is absolutely necessary. This suggestion has been made by expert bodies like Law Commission of India and various Police Commissions. This will, however, necessitate substantially larger recruitment of policemen to cope with the heavy workload.

SUB-CULTURE

It is necessary in this connection to bear in mind another aspect of police functioning. There are informal rules of police sub-culture which glorify deviance not in terms of personal gain or aggrandizement, but as a requirement for completing the police jobs. Several studies have highlighted the unfortunate situation in police organizations which engender a belief in newly recruited officers that what they have been taught in training school is to be quickly unlearned and they must fall in line with the prevalent culture in the organization in which the emphasis is on the end of apprehending and convicting criminals and not on the means to be adopted to attain the objective.

It is a fact that the victims of custodial violence mostly are people coming from poor and backward sections of the society with little political or financial power to back them. Personal enmity, caste and political considerations, and at times pecuniary benefits become important considerations for custodial deaths rather than investigation of cases.

To prevent custodial violence it is necessary for senior officers of the force to make clear to the subordinates that use of third-degree methods against persons in custody will not be condoned and swift and deterrent action will be taken against the perpetrators of such offences. Superior officers from the Superintendent of Police to the D.G. first must themselves realise that third degree methods are criminal offences made punishable by Indian Penal Code vide Sections 330 and 331. They must send clear and unequivocal signals to the subordinates that if any case of torture to persons detained in custody comes to notice, they will take deterrent action against the offenders. Unfortunately, many senior officers tacitly encourage these aberrations, and then blame the subordinates when things get out of hand. This kind of duplicitous approach will not help. This only creates a feeling among the subordinate staff that senior officers are paying lip-service to laws and rules and they do not really mean what they preach. Again it is seen that through in a large number of cases of custodial deaths officers responsible are suspended and departmental enquiries instituted, such departmental enquiries drag on and ultimately very few offenders are brought to book.

During surprise visits to the police-stations, the senior officers must ensure that police station officers keep correct, up-to-date and true records of persons called for questioning and enquiry and the records should contain details of reasons for such action. These records are to be verified to ensure that persons in detention are not subjected to inhuman treatment or torture. It has been very perceptively observed by Professor Twining (Benthem on torture) that institutionalization of torture would lead to the "creation of a guild of professional torturers and would open the door for steady erosion of resistance to it in less extreme cases until ordinary people become conditioned to accept it as commonplace and tolerable.

The National Police Commission in its First Report (February, 1979) clearly recommended mandatory judicial enquiry in the case of an alleged rape, death or grievous injury in police custody. It added that such a judicial enquiry should be held by an Additional Sessions Judge nominated for the purpose who could be designated as the District Inquiry Authority. The DIA could be assisted by an assessor who can be an Additional S.P. or a senior DSP nominated for this purpose in each district or a group of districts. DIA's enquiry will be in the nature of fact-finding and his report will go to the State Government which would take appropriate action in consulation with the Police Chief. This recommendation of the NPC is sound and pragmatic. The association of a Judge with the enquiry from its inception will give it a certain amount of credibility. At the same time co-option of a police officer will ensure that police version also gets proper attention and scrutiny. It is unfortunate that this valuable recommendation of the NPC has not been implemented.

As many arrested persons in police custody in a state of acute mental depression commit suicide, it is necessary for the senior officers visiting the police station to see that no weapons or articles that can facilitate escape or suicide like bamboos, ropes, tools, etc. are within the reach of the lock-up. Indeed the Police Manuals of various States have elaborate rules for the safe custody and protection of prisoners in the lock-up. Any wilful breach of these rules are made punishable with imprisonment or fine under Section 29 of the Indian Police Act, 1861.

G.M. College of Education
Raipur, Bantalab
Jammu
Acc. No. 10562
Dated 27-2-13

PRESUMPTION

The Law Commission of India, on a reference made by the Supreme Court of India, recommended (June, 1985) that a Section 114(B) should be inserted in the Indian Evidence Act, 1872, to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by the police officer. Such a provision perhaps will have a restraining effect on officers indulging in torture. Similarly, amendments in CrPC provides for examination of the arrestee by a medical practitioner at the request of the latter. It should be amended to provide for compulsory physical examination of the arrested person by a medical practitioner with a detailed record of his physical and mental condition.

COMPENSATION

A time has also come to think of adequate compensation to the victims. At present there is no law governing the liability of State for the wrong done to the citizen by the a public servant in course of his employment. The only provision regarding payment of compensation is contained in CrPC Section 357 which provides for payment of compensation for a loss or injury caused by criminal offence to the victim after the fine is imposed by the court. The provision does not make it mandatory for the State to pay compensation to the victims. The courts in India have granted compensation to the victims of custodial crimes or family members in many cases. In the case of Rudul Sah *V* State of Bihar, while awarding interim compensation for wrongful detention, the Supreme

Court observed that "respect for rights of individuals is the bastion of democracy. Therefore, the state must repair the damage done by its officers to the petitioner's rights." However, the amount of compensation has not been uniform and cardinal principles have not been laid down. It is desirable to frame a suitable legislation under which the State should pay compensation to the victims of custodial crime or to their kith and kin.

TRAINING

During the training of the Indian Police Service officers at the National Police Academy there is constant emphasis on sensitizing them to the issues of human rights and making clear that extra-legal methods are counter-productive. In all police training institutions in the country there should be constant emphasis on the fact that no explanation or expediency can justify the use of torture. It is necessary to provide more powers to facilitate investigation by the Police, but at the same time it has to be strictly ensured that powers are not misused. In Kishor Singh *V* State of Rajasthan (A.I.R. 1982 SC 625) the Supreme Court observed, "Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound in our constitutional culture than a State official running berserk regardless of human rights" has to be read and re-read by the police trainers. Again, international opinion in the form of Conventions and Covenants has declared that the right not to be tortured is a non-derogable right. India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and is thus under an international obligation to see that the non-derogable right of freedom from torture is not violated. Further, Article 2 of the United Nations Code of Conduct for Law Enforcement Officials categorically lays down that "In the performance of their duty, law-enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

There should also be constant exhortation by the senior officers in the field to the members of the force at the cutting-edge levels that extra-legal methods and torture are self-defeating and will expose them to legal and departmental action. While serving in the BSF, I found that this attitude and approach on the part of the senior officers have had a restraining impact on members of the force. It builds up an organizational climate that frowns on abuse or misuse of authority and other forms of excesses.

While examining ways and means of making laws more humanistic and providing safeguards against abuse of power by the police, it is also necessary to bear in mind, at the same time, the difficult conditions under which the police are functioning. Some of the legal impediments that hamper proper functioning of the police are to be removed. This is needed more so at a time when the police are confronting unprecedented problems of law and order. Detention in police custody for 24 hours before sending the accused to court is a check on arbitrary abuse of authority by the police. But it does create problems in investigation of complicated cases where sustained interrogation in police custody is necessary to unearth vital clues and elicit more information. It can be mentioned in this connection that in UK the Prevention of Terrorism Act, 1974, permits the police to arrest without warrant for offences under the Act and detain the suspect for 48 hours and for a further 5 days with the Home Secretary's approval.

The creation of the National Human Rights Commission by the Government has been welcomed by all sections including the police. It provides a forum where complaints against violation of human rights can be aired. The creation of the Commission by the Government has sent correct signals to members of the police that violations of human rights will not be brooked by the Government. It also, at the same time, provides an opportunity to the police to demolish false and motivated allegations.

9

LYNCH KILLING — AN OMINOUS TREND

Recently while inauguarating a Community Policing Project at Durgapur, the Chief Minister of West Bengal, Shri Jyoti Basu, blamed the police for the growing tendency among the people to take law in their own hands. Incidents of lynching the criminals or miscreants have sharply increased all over the country. People no longer repose faith in the criminal justice system of the country which has become cumbrous, slow-moving and effete, but have started believing in 'vigilantism'–taking laws in their own hands and delivering instant justice. This no doubt augurs ill for law-enforcement and order-maintenance in the country.

Police alertness can, of course, prevent some cases of lynching of criminals, but the reason for this growing phenomenon lies elsewhere. One must critically analyse the reasons and go into the heart of the matter. And then perhaps some suitable corrective strategies can be worked out. Mere police-bashing will not help. It will only further alienate the police from the public and erode its credibility.

CRIME STATISTICS

Today the country is witnessing a surge in crime and lawlessness. Official crime statistics, yardsticks for measuring law and order situation in the state, do not reveal the sombre ground realities. In the year 1992 about 52 lakhs cognisable crimes were reported in the country, marking an increase of 2.5 percent over the figures of the previous year. It is, however, well-known to all senior police officers that there is a massive burking of crime. Even by a very conservative estimate, actual incidence of crime is four to five times more than what is reported. Large number of cases also go unregistered. One of the frequent complaints against the police before the National Human Rights Commission is non-registration of cases, particularly in rural areas. This malpractice of non-registration arises from several reasons. Among all such reasons the most important one, as the National Police Commission has so forcefully highlighted in its report, is the anxiety of the political executive in the state Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that the crime is well-controlled and is even going down as a result of efficient police administration under their charge.

VICTIMIZATION SURVEY

In many developed countries like Great Britain, U.S.A.., Canada, Netherlands, U.S.A., now apart from crime reviews, crime victimization survey is done to get a clear idea of the magnitude and impact of crime. Crime reviews are normally based on information collected by the police. Criminal victimization survey has now changed the situation and created the second source of information and become a regular feature of crime statistics. The National Human Rights Commission is now planning to sponsor a crime victimization survey by a recognised study group in a metropolitan city. This will be one of the pioneering victimization surveys in the country and will provide a rich harvest of useful victimological data. However, even, the suppressed crime figures of the country cannot conceal the glaring fact that in the year 1992 dacoity recorded an increase of 10.5 percent, murder 23.2 percent over the quinquennial average. Rape increased 22.2 percent over q.a. and 12.5 percent over 1991. The degree of violence used by the offenders in the commission of crimes has also sharply increased due to frequent use of fire–arms and explosives.

Against this backdrop of rising crimes and crescendo of violence due to the operation of various crimogenic factors, it is seen that the present criminal justice system is offering no credible deterrence. The criminals have come to realise that crime pays and gains of crime outweigh its risks. Jeremy Bentham, well-known philosopher-cum-penologist, had unerringly observed that the real deterrent against crime is "the certainty and not the severity of punishment."

ADVERSARIAL PATTERN

The administration of criminal justice in India follows the Anglo-Saxen Adversarial pattern with greater stress on proof than on truth. In order to produce the desired impact the different segments of the criminal justice system–the police, Courts and correctional institutions, must function in harmony and cohesion. Unfortunately, however, the three segments of the criminal justice system instead of inter-acting tend to counter-act one another. The result is that experienced professional criminals have come to know that in the present system of trial and investigation they have very good chances of escaping punishment altogether.

This is also borne out by hard facts and cold statistics. According to the figures compiled by the national Crime Records Bureau (Crime in India, 1992) altogether 42, 74, 361 IPC cases came up for trial during the year 1992 including cases from the previous years. Only 20 percent of the cases could be disposed of, leaving behind 80 percent of the cases (33, 97, 961 cases) pending disposal at the end of the year. Again percentage of conviction in respect of serious crimes has sharply plummeted during the year 1992. Out of total 19, 241 murder cases, conviction was only in 8,014 cases. Out of 5867 cases of rape, conviction was in respect of 1981 cases only. These are all-India figures. I know that in some states seriously ravaged by crimes, conviction figures in respect of heinous offences has gone below 12 percent. This is a frightening situation. The sieving process of the criminal justice system is functioning more in favour of the offender. Once a criminal escapes punishment, he becomes more daring and develops the notion that crime pays. One has to remember the perspicacious observation of Lord Devlin that when a "criminal goes free, it is as much a failure of abstract justice as when an innocent man is convicted"

Today malfunctioning of the criminal justice system stems mainly from the incapability of the police to honestly and efficiently investigate criminal cases and apply crime control measures, and abnormal delay in disposal of cases by the courts of law. Because of multifarious commitments and extraneous pressure, the police officers have no time for thorough investigation of cases. A sample survey done by the National Police Commission in six States of the country had revealed that an investigating officer is able to devote only 37 percent of his time in investigational work while the rest of his time is taken up by other duties like VIP Bandobust, petition enquiries, court attendance etc. Indeed crime prevention and detection work of the police has been relegated to the background. The NHRC has now decided to press the government to accept the salient recommendations of the National Police Commission and initiate steps for separation of the law and order from the investigation staff of the police. A certain number of officers has to be ear-marked only for investigation of cases and should not be summoned for law and order and other miscellaneous duties. This of course will need substantial augmentation of the strength of police staff at Thana level.

Delay in disposal of cases in law courts is another cancerous evil eating into the vitals of the criminal justice system which, to be effective and credible, must function with speed. Unfortunately, in various courts of the country there is a staggering number of cases pending at various stages of adjudication. According to a study done by the Bureau of Police Research and Development, the number of cases pending in 1987 in different High Courts for more than 5 years exceeded 35 thousand. Now the position has further worsened. As a result, the jails are crowded to asphyxiation by the undertrials. The National Human Rights Commission members and officers visiting different jails find to their dismay that more than 80 percent of the prisoners are under-trials. I, myself have seen young under-trials languishing in jails over a number of years along with hardened criminals. Foreigners involved in Narcotic Drugs and Psychotropic Substances (NDPS) Act cases have bitterly complained before me in Central Prisons at Madurai, Madras and Tihar that cases against them are dragging on for more than five to six years and they do not know when their ordeal will come to an end. I did feel that their angry and vitriolic outbursts against the slow pace of trial of the cases were not without substance.

Therefore, it is no wonder that people have started thinking of adopting other than legal measures to settle their complaints and grievances. Very often it takes the form of asking police to adopt illegal and coercive measures to firmly deal with hardened criminals, terrorists etc. who are taking fullest advantage of our effete criminal justice system. Large-scale lawlessness and disorder in the country sometimes prompt even well-intentioned citizens actuated by negative emotions, fear and anger to advocate draconian means. It is important to remember that abuses of authority by police can flourish not only because of official negligence or acquiescence but because, rightly or wrongly, many people approve of it as a necessary and unpleasant task. Such conditions do impose considerable moral burden on conscientious police officials whose task of checking drift of this kind is of paramount importance.

This question of public expectation and pressure on the police is posed before me even by many senior police officers when I interact with them during my tours of duty. I repeat before them what as the Director of the National Police Academy I always used to tell the IPS probationers that the police are accountable to law and have to function within its four corners. They have no authority to take laws in their own hands and function as investigators as well as executioners. There is no scope for counter-violence under the Indian Penal Code.

I know of a case where the officer-in-charge of a police station got rid of two notorious criminals of his jurisdiction by inciting mobs to lynch them. This kind of perversity is now displayed by many police officers. Lynch mobs, as psychologists point out, armour themselves with a sense of their retributive righteousness. They also mean to exert social control by exemplary doses of terror on the conceit that violence is the only language the victims understand. Each atrocity has its own circumstances, its own atmosphere and triggers, The first American vigilantes called themselves the "regulators" because they viewed their action as restoring balance to a situation that was out of control.

Lynch killings, however, clearly betoken people's lack of faith in the criminal justice administration. They are ominous warning signals.

Instead of only blaming the police, the political masters should seriously think of ways and means to revitalise the near-collapsing criminal justice system. The National Police Commission correctly recommended the appointment of a criminal Justice commission for the country which will look into all the sub-systems integratedly instead of appointing a Police Commission, Prison Reforms Commission or asking the Law Commission to go into the matters of judiciary alone. The criminal justice system is to be revamped and made a more meaningful instrument for delivery of justice to all sections of the people.

According to demographic projections, the population of the country will reach one billion mark by the end of the century. Increase of population density means aggravation of interpersonal tensions and higher degree of anonymity, both of which are crimogenic. The country is going to face in the coming years a rising tide of crime and lawlessness with a criminal justice machinery ill-equipped to face the onslaught. Political leaders and enlightened citizens must pause and ponder over it.

10

RAPE-A HORRENDOUS CRIME

The danger of sexual assault or rape is a part of every woman's life. In many ways it goes to restrict her mobility and cramp her style of living. Legal meaning of rape is simple and easy to understand. According to the Indian Penal Code it is the performance of sexual intercourse with a woman without her consent through force or threat or fraud. In the United Kingdom the offence against the Person act 1861, made rape a capital offence punishable with imprisonment for life. Section 376 of the Indian Penal Code provides imprisonment for a term that may extend upto 10 years as punishment for rape. In most countries of the world rape is considered as a serious crime, though always not for the same reason. In many African tribes, rape is heavily fined because it is considered as a violation of property rights, the woman belonging either to a father or a husband.

Because of the social stigma and shame attached to the victims, rape remains one of the most-misunderstood and under-reported crimes. In a study of the rape cases in U.S.A. Smithyman*1 suggests that for every 100 rape cases only 25 are reported to the police, 13 person are arrested and 9 persons prosecuted and less than 5 are convicted. The national

Crime Victim Survey in Australia found that only 32 percent of victims of rape or attempted rape had reported the assault. There are a variety of reasons as to why this happens. It is clear from numerous reports that rape by stranger is more likely to be reported than assault by partner, date or acquaintance. Even in Western countries there is fear or dislike of "going to the police". If the victim feels that the police will treat her supportively, she is more apt to report. Again those survivors who have suffered injuries that require medical attention and have their families or friends who strongly feel about reporting are most likely to go to the police.

From statistics (even though large number of cases remain suppressed and unregistered)) furnished by the National Crime Records Bureau it is seen that there has been a sharp increase in the incidence of this crime in our country. 7767 cases were reported in the year 1987 and in 1991 the number of cases reported shot up to 9793. An increase in the incidence of crime by about 26 percent! In the year 1992, the figure went up to 11112. A publication of the Department of Women and Child, Govt of India, has projected the figures of crime against women in a very telling manner by mentioning that in the country now there is one rape in every 54 minutes, one molestation in every 26 minutes, one kidnapping/abduction in every 43 minutes and one criminal offence against women in every 7 minutes. A survey of rape cases in our country shows that rape victims come mostly from lower rungs of the society. Poor women working in villages and factories are very often the victims of this form of atrocity. In the year 1992, victims of rape were highest in the age group of 16-30 year.

NOT A SEX CRIME

It is a common mistake to view rape as a sex crime. This myth is re-inforced by certain stereotypes about male sexuality such as men's alleged inability to control themselves if they are aroused. These are, however, false images. Rape is very often an act of violence that uses sex as a weapon. Recent researches in the field have established that rape is motivated by aggression and by the desire to exert power and humiliate. Very often the intention of the offender is more aggressive than sexual. An average rapist is not one to whom normal sexual outlets are unavailable. While committing the crime he is not, as is believed, succumbing to uncontrollable lust, but is proving his own masculinity by degrading the victim. "The rapist derives an eroticised pleasure not through sex act but through an horrendous assault on victim's body".*2 Researches have shown also that mainly rapists come from families in which violence is frequent between parents and between parents and children.

Menachem Amir in his study of the rape cases from the police records in Philadelphia found that a large number of rapists had previous records of committing crimes against persons. His study also revealed that a majority of rape cases were not sudden occurrences, but had been carefully planned. In a U.S. nation-wide victim survey it was found that only 22 percent of the victims had been raped by strangers.*3 However, many multiple rapes are planned events in which again there is a central person who functions as an 'initiator'.

Again, a study by Smith*4 in two London Boroughs showed that almost two thirds of the rapists were under 30 and the Asian and Oriental women are more reluctant to report than other ethnic groups for reasons of stigma and also because they do not want to involve the police.

INVESTIGATION

Not only many cases of rape are not reported, but many cases in our country are not registered by the unscrupulous officers in the police stations. Investigation of rape cases requires extra-sympathetic handling of the traumatised victims. The investigators must try to establish proper rapport with the rape victims and help the latter to overcome shame, nervousness and reluctance. The investigator must impress on the victim that he is concerned not only with the arrests and conviction of the offender but also the victim's welfare. Female victims also feel shy and embarrassed to answer delicate questions posed by male investigating officers. It will be useful if statements of rape victims are recorded, wherever possible, by female investigating officers. Unfortunately, the number of women police personnel in our country is totally inadequate. It is almost less than one per cent of the total force and are available only in big cities and in special wings of the Criminal Investigation Department. I remember a violent dacoity case in Rajgangpur area of Sundergarh District in Orissa, where rape of the womenfolk in the house came to light only because of the proper interrogation of the victims by the woman Sub-Inspector who was brought from Rourkela. It is necessary not only to substantially increase the strength of women investigating officers in the State Police, but also train them in supportive and sympathetic interveiwing techniques. In countries like Australia increased use of female officers and specially trained 'Sex Crime Units' have produced positive results.

MEDICAL REPORT

In India, though about 80 percent of the rape cases are charge-sheeted by the police, a large number of these cases ultimately end in acquittal because various factors like delayed reporting, unfavourable medical opinion, witnesses turning hostile etc. Of the total number of rape cases in which trials were completed, 34.2 percent ended in conviction in 1991 and 33 percent in 1992.*5 One important factor behind failure of a large number of cases in courts of law is the negative opinion given by the medical officers who examine the rape victims. Medical evidence is a crucial piece of information to establish the case of rape. The police investigator has to rely upon the examining physician to collect the best evidence in the case–evidence from the body of the victims. It is seen that lady doctors in government hospitals hesitate to give frank medical opinion in rape cases for fear of appearing as a prosecution witness and then being subjected to embarrassing cross-examination in the courts of law. I personally know of a case in Sundergarh district of Orissa in which two officers of a well-known engineering concern raped an Adivasi girl by taking her out on the pretext of arranging a job for her. This created a commotion and the workers in the factory went on strike. The case ended in acquittal because the information given by the lady doctor Was ambivalent and also because of gaining over of some witnesses, who impeached the character of the prosecutrix. I, however, had the satisfaction of forcing the management to dismiss those two profligates.

The Law Commission in its Report (1980) also pointed out that "the report of medical examination is often cursory or is not sent in time". The Commission recommended some additions to the provisions in the CRPC, the most important being that the "report shall state precisely the reasons for each conclusion arrived at".

RAPE CRISIS CENTRES

In USA and UK there are many 'Rape Crisis Centres' to advise the rape victims. Rape Crisis Centres send experts to stay with the victims during cross-examination by the police. They also advise medical officers regarding types of evidence to be collected in sexual assault cases. Rape Crisis Centres also send experts to lecture at Medical Colleges and Schools. Many hospitals in the USA now maintain "sexual assault evidence kits" containing items like instruction-sheet for the examining physician, packages of sterile cotton swabs and envelopes marked for clothing, fibres, hair, secretions etc. It is necessary that such evidence kits should be maintained in our hospitals and medical centres too.

DELAY IN DISPOSAL OF CASES

There is very often unfortunate delay in disposal of cases involving crime against women in the courts of law. From a sample study of 100 cases of rape, kidnapping and abduction done by a study group of the Bureau of Police Research and Development it was found that only in 34 percent cases, trials were completed in six months, in 48 percent cases within 6 to 12 months, and in 17 percent cases it took more than a year. The rate of disposal of rape cases is about 18 percent. There should be all-out efforts to reduce the time taken in the courts for disposal of these cases in view of the trying and agonizing situation through which the victims and the family members pass through the trial stage. "A socially sensitized judge" in the memorable words of the Supreme Court "is a better statutory answer against gender outrage than long clauses of complex section with all the protection writ into it." Besides delay in disposal, punishment imposed by the courts in cases ending in conviction has been less than adequate. Though law now provides minimum punishment of 10 years in cases of custodial rape, the courts in the country in different cases have refrained from imposing the minimum punishment. The decision of the Supreme Court in the case of Prem Chand *6 (known as Suman Rani case) was assailed by various women's organizations as a "display of patriachial bias and a retreat to conservative ideology which views rape only as an attack on a woman's chastity".

Severe punishment of the rapists has some deterrent value. In a study by J. David Hirschel and W. Hutchison*7 it was found that about 69 percent of the male offenders in the sample had previous criminal histories. Arrest alone may not constitute a strong societal response. Lengthy prison sentences have some behaviour-altering deterrent values. Many well-known jurists and public men have advocated capital punishment for the criminals who commit rape as it is an offence worse than murder so far as its impact is concerned.

Another problem of the rape victims at the time of trial deserves notice. Section 155(4) of the Indian Evidence Act, 1872, permits the cross-examiner to ask the victim of rape questions about per past character. These questions can be very embarrassing and place the victim under severe emotional strain. The questions can cover not only her immoral association with the accused in the past, but also her alleged immoral character. This can be checked only by amending the law. An amendment of this provision has been recommended by the Law Commission of India in more than one of its reports.

IMPACT ON THE VICTIM

Rape is a crime which has a devastating effect on the survivors. It has been described as a "beginning of a nightmare". The after - shocks include depression, fear, guilt-complex, suicidal-action, diminished sexual interest etc. "one becomes afraid of".......... writes a victim, "half the human race". Because of the stigma attached to rape, the victim indeed faces virtual social ostracism. For an unmarried girl in our country such an ignominy would shatter the chances of ever getting married. Public men as well as women's organizations should carry on a vigorous crusade for social rehabilitation of the rape victims and help them to come forward to expose the miscreants. Failure to lodge a complaint would be an indirect encouragement to the rapists. A rape victim named Barbara Freeman in New York, who bravely fought back and went through all the motions of a long jury trial and succeeded in getting the assailants convicted, aptly said that 'getting those men off the street was the best therapy I could have had." Fortunately, increasingly greater number of women are now coming forward to report attacks on them. This is an encouraging sign. This has to be backed up by vigorous investigation and deterrent punishment of the malefactors.

CRIMINAL LAW AMENDMENT ACT 1983

The Criminal Law Amendment Act (1983) has brought about some important changes in the existing laws of rape. The act was passed by the Parliament as a response to the growing public opinion demanding more stringent anti-rape laws. It amends section 376 of the IPC and enhances the punishment of rape by providing that it shall not be less than 7 years. If the sentence of imprisonment is for a term less than 7 years, the court will have to mention in its judgement the adequate and special reasons for this. It also provides enhanced punishment of minimum of 10 years of imprisonment for police officers or staff of jail, the remand homes or other places of custody established by law. The Act further inserts a new section in the Indian Evidence Act-Section 114A-which lays down that where sexual intercourse by the accused has been proved, and the victim states before the court that she did not consent, the court will presume that there was absence of consent and the onus will be on the accused to prove that the woman had consented to the act. The act amends the Cr.PC and provides for trial in camera. It also inserts a new section in the IPC-Sec 228(a)-which makes disclosure of the identity of the victims in rape cases an offence punishable with imprisonment for two years. The act was passed by the Parliament as a response to growing public opinion demanding more stringent anti-rape laws.

MARITAL RAPE

Section 375 IPC lays down that sexual intercourse by a man with his own wife, the wife not being under 15 years age, is not rape. This exception has created controversies and has been violently criticized by many human rights activists and women's organizations. By judicial decisions this exception has disappeared in England. A marital rape has now become an offence. The House of Lords in England, a fairly conservative body, has ruled as follows. "It cannot be affirmed nowadays, whatever the position may have been in earlier centuries, that it is an incident of modern marriage that a wife consents to intercourse in all circumstances, including sexual intercourse obtained by force. There is plausible justification ...... that she consents to intercourse by assault."*8 Further it has been pointed out by the Law Commission in its report (Law Commission 1980:9) that by the amendment of Child Marriage Restraint Act, 1978, the age of marriage was raised to 18 years but the rape law continues to view forcible intercourse with a wife who is 15 years of age as being no offence at all. Continuance of provisions in the Indian Penal Code referring to a girl of 12 years and 15 years as a "wife" tantamounts to granting approval to the man flouting the law, viz Child Marriage Restraint Act. Pointing out this anomaly, the Law Commission recommended that since marriage with a girl below 18 years is prohibited, sexual intercourse with a girl below 18 years should also be prohibited.

VICTIMS OF CRIME

Section 357 Cr.PC of (1973) provides for compensation to victims of offence. As the text of the section goes: this is a power and not a duty of the court. Under Section 357, the offender and the State is ordered to pay compensation to the victims. Now in many advanced countries compensation by the State to the victims of crime has become a well-established principle. In England, the Criminal Justice Act, 1988, provides for payment of compensation by the State to the victims of crime. In our country also, it is necessary to frame suitable legislation under which the State will have to pay compensation to the victims of serious crimes like rapes.

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11

HUMAN RIGHTS IN CRIMINAL JUSTICE SYSTEM

Human rights are those minimal rights which every individual must have by virtue of his being a 'member of human family', irrespective of any other consideration. They are based on mankind's demand for a life in which the inherent dignity of the human being will receive respect and protection. The concept of human rights is as old as the ancient doctrine of natural rights founded on natural law. The expression 'human rights', however, is of recent origin, emerging from the post second world war international charters and conventions. The first documentary use of the expression 'human rights' could be seen in the charter of the United Nations which was adopted at San Francisco on June 25, 1945. The United Nations which arose like phoenix out of the ashes of the Second World War declared promotion and fostering of human rights and basic freedom as one of its goals.

U.N. CHARTER

The preamble of the UN Charter declared that 're-affirmation of faith in fundamental human rights' is one of the objects of the United Nations. Article 1 of the UN Charter stated that the United Nations shall seek to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedom of all without distinction as to race, sex, language or religion". The charter of the United Nations does not define the contents of human rights. The framers of the charter left this task to the organisation itself and it was decided for this purpose that an International Bill of Human Rights will be drawn up.

International Bill of Human Rights comprises:-

(a) Universal Declaration of Human Rights.

(b) International Covenant on Economic, Social and Cultural Rights.

(c) International Covenant on Civil and Political Rights 1966.

(d) Optional Protocol to the International Covenant on Civil and Political Rights 1966, providing for the right of individual to petition to the international agencies.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in Paris in December 10, 1948. It is now regarded as a mile-stone in the legal and judicial history of mankind. Article 1 to 21 of the Universal Declaration are natural rights to life, liberty, security of persons, protection against discrimination, arbitrary arrest etc. Articles 22 to 28 are concerned with the social and economic rights without which there will be no occasion for enjoyment of natural rights or basic freedom by millions of people of the world.

It is now recognised that Universal Declaration has become a part of the customary international law because of its unanimous adoption by the General Assembly without a single dissident vote and its repeated affirmation in many subsequent resolutions of the General Assembly. Many member States have incorporated in their constitutions many of the provisions of the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights no doubt influenced the views and thinking of the framers of the Indian Constitution. Part-III of the Constitution comprehensively deals with community rights and civil liberties. Article 32 of the Constitution provides for remedies for enforcement of fundamental rights. Even prior to the framing of the Constitution for Free India, Mahatma Gandhi had announced before the second Round Table Conference that his aim was to establish a "political society in India in which there would be no distinction between the high and low class people, and dignity and justice, social, political and economic, would be ensured to the teeming millions of India"*1

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly while debates in the Indian Constituent Assembly were going on. Hence it must be assumed as the Supreme Court has said in the case of Menaka Gandhi *V* Union of India*2 that the makers of the Indian Constitution in framing Part III on the Fundamental Rights were influenced by the provisions of the Universal Declaration. "It is therefore legitimate for the court to refer to the comparable provisions of the Universal Declaration in construing the intent and scope of the relevant text of Part III of the Constitution. The Supreme Court has also felt that not only the Fundamental Rights in Part-III, but also the Directive Principles (Part-IV) are based on human rights, so that the "Directives, even though non-justiciable, are not to be regarded as inferior to the Fundamental Rights".*3

In India the administration of Criminal Justice System follows the Anglo Saxon adversarial pattern. The three segments of the Criminal Justice system viz, the police, the judiciary and the correctional institutions must function in a harmonious and cohesive manner in order to produce the desired results. In India, however, the three wings of the Criminal Justice System, very often instead of interacting tend to counteract one another. The police very often instead of promoting and protecting human rights violate them callously. Allegations of the police violence and brutality are being constantly received from different parts of the country.

NON-REGISTRATION OF CASES

In my opinion non-registration of cases by the police constitutes one of the most serious forms of violation of human rights. According to the National Police Commission (1978), the most important factor responsible for non-registration of complaints is the anxiety of the political executive in the State Governments to keep the recorded crime figures low so that they can claim before the public and the State Legislature that crime has been well-controlled and is going down because of the efficiency of the police administration under their charge. This statistical approach for assessing the crime situation and evaluating performance is often responsible for massive burking of crime.

Again, it is noticed that subordinate officers try to avoid registration of cases by pointing out that the offence occurred in the jurisdiction of another police station. As a result, a complainant has to run from pillar to post to locate the particular police station and get the case registered. Under Section 154 CrPC, the officer incharge of a police station has to register a case and draw up an FIR as soon as a complaint of a cognizable offence is laid at the police station. There is no scope for non-registration of cases under the pretext of jurisdictional controversy.

ARRESTS

The power of the police to arrest is also often very grossly abused. The National Police Commission in its report has adversely commented upon abuse of this power of the police and mentioned it as one of the chief sources of corruption in police. The report pointed out that nearly "60 percent of the arrests were unnecessary, and as such, unjustified. The Commission estimated that 43.25 percent expenditure in the connected jails was over such prisoners who in the ultimate analysis need not have been arrested at all".

The Supreme Court in the case of Joginder Kumar *v/s* State of U.P. and others *4 has put clear restrictions on the powers of police to make arbitrary arrests. The court has laid down that the arrested person brought to the police station should be informed of his right by the police to contact one of his friends or relatives or one likely to take interest in his welfare. An entry to this effect has to be made in the station diary. These protections, according to the court of law, flow from Articles 21 and 22(1) of the Constitution and are to be enforced strictly.

CUSTODIAL VIOLENCE

It is noticed that persons belonging to backward and dis-advantaged groups, graphically described as 'Police properties' are the principal victims of torture and violence. The National Police Commission (1977) recommended that in all cases of custodial death, there should be mandatory judicial enquiries. Such a judicial enquiry should be conducted by an Additional Sessions Judge to be nominated for the purpose to be designated as the District Inquiry Authority (DIA). DIA could be assisted by an assessor who can be an Additional Supdt of Police or the Supdt of Police, nominated for the purpose in each district or a group of districts. This is a very pragmatic recommendation of the National Police Commission.

The association of a judge with the enquiry from its inception will give it a certain amount of credibility, and at the same time co-option of a Police Officer will ensure that the police version gets proper attention and scrutiny. Unfortunately, this valuable recommendation of the National Police Commission has not been so far implemented. The leaders of the police forces should impress on the officers and men serving under them that whatsoever may be the situational compulsions, and however hardened may be the criminal, there is no justification at all for allowing people to die in police custody. A single case of death in police custody causes irreparable damage to the reputation of the police force and severely erodes its credibility before the eyes of the public. Death in police custody, if unchecked, as one senior police officer has aptly said, "will one day sound the death-knell of the police force itself".

The Law Commission of India in June, 1985, produced a working paper called "Injuries in police custody". The Commissions's proposal followed the Supreme Court judgement on June 22, 1985 in which the Court dealt with the custody death of Brij Lal, a farmer in UP. The Supreme Court observed:-

"We would like to impress upon the government the need to amend the law appropriately so that policemen who commit atrocities on persons in their custody are not allowed to escape due to paucity or absence of evidence. The police officers alone and none others can give evidence as regard the circumstances in which a person in their custody comes to receive injuries. Bound by their ties of brotherhood they often prefer to remain silent, and when they choose to speak they put their own gloss upon facts and upon the truth. The law on the burden of proof is such that it should be re-examined."

The Law Commission recommended that a section 114-B should be inserted to the Indian Evidence Act, 1872, to introduce a rebuttable presumption that injuries sustained by a person in jail custody may be presumed to have been caused by the police officers. This would shift the burden on the police officer. It is felt that this kind of an amendment will have a restraining effect on officers indulging in custodial violence and torture. In this connection, however, it is also to be stressed that there are other blatant anomalies which require immediate attention. The outmoded Indian Police Act of 1861, which governs the structure and working of the Indian police forces, is to be immediately scrapped. An Act passed by the colonial regime with the primary aim of suppressing the people continues to rule the roost in independent India. The National Police Commission in its concluding report strongly recommended that the old Police Act of 1861 should be replaced by a new Act and the commission submitted the draft of such an act with a view to making the police "service-oriented, free from extraneous influences and yet accountable to the people."

The National Human Rights Commission has now issued instructions to all State Governments to report to it all cases of custodial death and rape, within 24 hours and order immediate enquiry. In the year, 1994, the Commission received till 31-12-94, 109 cases of custodial death and 3 cases of rape. The Rajasthan Government has now informed the Commission that it has taken a decision that in cases of death in police custody, the entire staff of the Police Station should be transferred immediately and a criminal case will be registered against the police personnel involved in the crime.

Recently, while probing into cases of custodial death in Bihar the investigating staff of the Commission found that though in some cases criminal prosecution was launched against the police officers responsible for custodial deaths, ultimately, none has been visited with any punishment. In some cases investigation was taken up against the delinquent police officers by the State CID, but the cases have not be finalised even after 4 or 5 years. This gives a clear idea that the Government and the police department have not taken adequate and determined measures to bring the culprits to Justice.

In this connection, it is worth-mentioning that the United Nations General Assembly in November, 1979, adopted a resolution prescribing a code of conduct for the Law-enforcement officers. Article 2 lays down that in the performance of their duties, the law-enforcement officers shall respect and protect human dignity and maintain and uphold human rights of all persons. In India, based on the recommendations of the conference of the heads of police officers, the Ministry of Home Affairs has also approved and notified a code of conduct of the police and circulated it. This code of conduct enjoins the police to respect and up-hold the rights of the citizens as guaranteed by the Constitution

The General Assembly on Dec, 9, 1975, adopted the Declaration on Protection of all persons from being subjected to Torture and other Cruel, Inhuman or Degrading treatment or Punishment. Article 2 declares torture as an "offence" against human dignity and as a violation of human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights. The States are prohibited to "promote or tolerate" torture even in exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency and are obligated to take effective measures against torture. Article 5 lays down comprehensive training of law enforcement officials against torture. Article 6 requires a system of review of the interrogation methods and practises as well as custodial arrangements.

The Declaration was followed on December 10, 1984, by a convention which lays down more elaborate provisions. Unfortunately, India has not ratified the Convention against Torture. The Chariman of the National Human Rights Commission recently in a letter to the Prime Minister has written that India should immediately ratify the convention and give effect to its extremely humane and well-worked out norms. The letter says "the greatest tribute that the Republic of India can pay to the Father of the nation, the apostle of peace, would certainly be our acceptance of the convention against Torture"

COMPENSATION TO THE CRIME VICTIMS

Provision of compensation to the crime victims is a crying need of the hour. The International covenant of the civil and political rights, 1966, indicates that an enforceable right to compensation is conceptually integral to human rights. Article 9(5) of the Covenant lays down:-

> "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Unfortunately, in India only provision regarding payment of compensation to the crime victims is contained in Cr.P.C. U/s 357 which provides for compensation for loss or injury caused by the criminal offence to victim after a fine is imposed by the court.

The provision does not make it mandatory for a state to pay compensation to the victims. However, the amount of compensation has not been uniform and no cardinal principles have been laid down. It is desirable to frame a suitable legislation under which the state should pay compensation to the victims of crime or to their next of kin.

Jail

The appalling conditions of Indian jails have been highlighted in various reports. The National Human Rights Commission in its Annual Report (1994-95) has expressed concern about over-crowding, lack of sanitation, poor medical facilities and dieting arrangements in various jails of the country. These serious deficiencies are compounded by mismanagement in the administration of jails. The Prison manuals differ from State to State and in certain cases they are more than 100 years old and totally outmoded. The commission is examining jail manuals of different States in order to prepare a model All India Jail Manual.

At the Tihar Jail in Delhi, it was noted by the Commission that 8500 prisoners have been lodged as against its capacity of 2500. 300 women have been lodged in the women's ward which has a capacity of 75. 900 juveniles have been accommodated in a place with capacity of 200. The Commission noted with distress that 85 percent of the inmates were undertrials. Similarly, during its visit to Andhra Pradesh in August, 1994, the Commission had visited an open air jail in the outskirts of Hyderabad and Secunderabad. The commission found that prisoners were paid a pittance allowance as wages for each day's work out of which half was credited to the prisoner's account to be given on his release. The Commission has recommended to the Andhra Pradesh government to substantially increase the wages of the prisoners.

In the case Prem Shankar Shukla *v/s* Delhi Admn,*5 the Supreme Court gave a number of directions with a view to reforming and humanising jail administration. Unfortunately, for a variety of reasons, the directions of the Supreme Court are not being properly observed in most of the jails in the country. Similarly, in the case of Sheela Barse *V* State of Maharashtras*6 the Supreme Court dealt with the question of treatment of women in police lock-ups and gave detailed directions for improving conditions in the lock-up and providing adequate protection to the arrested persons, and particularly to women kept in the police lock-ups. Describing conditions of police lock-up, Justice A.N. Mulla Committee on Jail Reforms has pointed out-"Most of these lock-ups have insufficient accommodation and are without even such basic facilities as lavatories, light, water and ventilation. Sanitary conditions in these lock-ups are also utterly unsatisfactory. The very first encounter of a person with the criminal justice system thus invokes in him a reaction of abhorrence for and distrust in the criminal justice system. Conditions of police lock-ups need to be urgently improved".

Justice A.N. Mulla in his report on Jail reforms has further said that "the conditions of living in sub-jails are worse than in many bigger jails mainly because the buildings are old, improvised and badly maintained. There is acute paucity of funds and facilities; and the management is left to the care of ill-paid, low level staff with remote or indifferent supervision. There are no adequate arrangements for preparing food for the prisoners within the sub-jail premises and sub-standard cooked food is supplied through contract system".**6

The report (Chapter 16) also deals with the agonies of the life convicts in jails. The Committee strongly felt that section 433-A of the Cr.P.C. which lays down that life convicts cannot be released before the actual imprisonment of 14 years should be suitably amended. The Committee felt that if immediate steps are not taken to remove some of the genuine grievances of the life convicts, prison riots are likely to occur now and again in different jails across the country.

PUBLIC INTEREST LITIGATION

The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of human rights. In this the Public interest litigation has had a major role to play. Earlier, there was a prevailing orthodox view in courts that a person who sought to enforce his fundamental rights through a Court must first establish that he had been personally aggrieved by the State act complained of. This is known as the rule of 'locus standi' or standing of the petitioner in the court who complains of a violation of his human rights. The restrictive rule of 'locus standi' was often operated to close the doors of justice to large masses of people in the country. In such cases an organisation or an individual has been allowed to fight for the public cause or challenge the constitutionality of law, though the petitioner may not be able to show that he has been directly affected by it. In this new era of public interest litigation, the court has not only dispensed with the law of locus standi but also the law of procedure, holding that the court can be moved even by a letter addressed to the judge of the Supreme Court or the High Court in place of ordinary process of petition supported by affidavits.*7 Significant strides in human rights jurisprudence in the country, particularly in favour of the weaker sections, had taken place as a result of the public interest litigation and display of judicial activism by the courts.

SUPREME COURT DECISIONS

In the famous case of Hussain Ara Khatun *V* the State of Bihar ***7 the Supreme Court found from the counter affidavit filed by the State of Bihar that there were a number of women prisoners in jails without even being accused of any offence merely because they happened to be the victims of an offence and were required for the purpose of giving evidence. In the language used by the Bihar Police they were in "protective custody". The court held that this so-called protective custody was nothing short of blatant violation of personal liberty guaranteed under article 21 of the Constitution. It ordered release of all such women and children languishing in jails. It reprimanded the administration as well as the judiciary in the State of Bihar for this shocking state of affairs which betrayed complete lack of concern for human values. The Supreme Court also in the same decision pointed out that speedy trial, though not specifically enumerated as the fundamental right in the Constitution, as in the United States, is implicit in the sweep of Article 21 because no procedure which denies speedy trial to the accused can be held as reasonable, fair and just.

The Supreme Court in another landmark decision took a bold step in advancing human rights in the field of criminal jurisprudence. The Supreme Court in the case of Francis Coralie Mullin *V* Union Terrirory of Delhi *** 7 has by an expansive intepretation of Article 21 of the Constitution interpreted the right to food, clothing and shelter in the expression "right of life" in the Article 21 of the Constitution. The court held that the "right to life is not limited only to protection of faculty; it includes the right to live with dignity and all that goes with it, viz. the bare necessaries of life such as food, clothing and shelter over the head". According to the court, the State cannot deprive any person of the right to live with basic human dignity. Hence, torture or cruel, inhuman degrading treatment which trenches on human dignity would be impermissible under the Constitution. The Supreme Court thus made immunity against torture or inhuman treatment as a fundamental right under Article 21 of the Constitution. Article 7 of the International covenant on Civil and Political Rights is thus woven into the constitutional jurisprudence of the country.

PENDENCY OF CASES

Unfortunately, in different courts in the country there is a large number of cases pending at different stages of adjudication. It is obvious that unless special measures are taken the goal of quick justice will fade away and people will start thinking of measures other than legal for redressing their complaints and grievances. The number of cases, pending trials in various courts in India in November 1991 was, according to one study, about 2 crores in the lower courts, 20 lakhs in the High courts and 2 lakhs in the Supreme Court-a frightening total of about 2 crores and 22 lakhs. *8 Besides the accumulation in the number of pending cases, the period over which the pendency has spread has become longer. A large number of cases are pending in sessions courts for a long period. Data relating to criminal cases pending in the High Courts also reveal that the percentage of increase has been greater in respect of cases pending over long periods. The following table in the BPR&D study paper, "Cost of Criminal Justice System in India" highlights the position.

Period of pendency in respect of criminal cases pending with High Courts

Period	*1984*	*1985*	*1986*	*30-6-87*	*Percentage increase over 1984*
Less than 1 yr.	51960	52405	61817	46996	- 9.56
1 to 2 yrs.	33156	39123	36294	40912	+ 23.39
2 to 3 yrs.	24504	27782	30105	30362	+ 23.91
3 to 4 yrs.	15033	19413	22218	24667	+ 23.91
4 to 5 yrs.	9207	11037	15158	19136	+ 107.84
5 to 6 yrs.	7233	6952	8761	13716	+ 89.63
6 to 7 yrs.	3754	5809	5984	8055	+ 114.57
7 to 8 yrs.	1797	2892	4877	5407	+ 200.89
8 to 9 yrs.	767	1184	2452	4636	+ 504.43
9 to 10 yrs.	276	562	903	2371	+ 759.06
Over to 10 yrs.	153	277	615	1262	+ 724.84
Total	147840	167436	189184	197520	+ 33.60

The above figures show that as many as 35447 criminal cases had been pending for more than five years in different High Courts.

The same study reveals that though the total number of sessions and magistrates' courts in the country increased from 5,044 in 1976 to 9,309 in 1984, the combined effective strength of the courts doing criminal work increased from 3,573 on December, 31, 1976 to only 4,356 on December, 31 1984. The increase in the number of courts has thus been utterly inadequate to cope with the problem. It is absolutely necessary to review not only the number of courts of different types existing in the states, but also the strength of Judges in each court and the prosecution at state and district levels.

The National Police Commission appropriately recommended the appointment of a Criminal Justice Commission for India which will look into all the sub-systems integratedly, instead of appointing a police commission, prison reforms commission or asking the Law Commission to go into matters of the judiciary alone. This is necessary to revitalize the criminal justice system in the country and making it a meaningful instrument of delivery of justice efficiently and expeditiously to all sections of the society.

CONCLUSION

The agenda for promotion of human rights in the administration of criminal justice system is a vast one. Respect for basic human rights and fundamental freedom is the hallmark of a civilized society. After all from ancient time to the modern day, human rights in various forms have been the cultural heritage of all mankind. In 1968, as part of a contribution to the International Human Rights Year, UNESCO published a collection of texts entitled "The Birthright of Man" which illustrated concepts of human rights from different cultural traditions and periods of history, including India, China, Japan, Russia, Turkey, Egypt, Israel and several countries of Africa. Ideology of human rights is not exclusively the product of Western Europe.

India has an age-long culture of respect for human rights. It is a birth place for major four religions and is proud to count among its nationals nearly every major religious denomination including their sects and sub-sects. The Annual report of the National Human Rights Commission (1993-94) beautifully States. "Cause of human rights is not alien to this great and ancient country. It is inherent in the beliefs, both religious and secular, that constitute the spirit of India. Indeed, it was for the Fundamental Rights of Indians, civil and political, economic, social and cultural, that the struggle for independence was waged. And it was these rights that found pride of place in the Constitution adopted by our Republic.'*9

Therefore, it is vital to build and strengthen the movements for effective implementation of human rights reflecting a strong sensitive human rights conscience throughout the country which will act on the belief that human rights are indivisible and their protection is abiding responsibility of the civilized international community.

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12

HUMAN RIGHTS AND PRACTICE OF POLICING

There is a direct and critical interrelationship and inter–dependence between policing and human rights. Policing can be a positive or negative factor in securing respect and ensuring protection of human rights. The word police is derived from the Greek word 'Politeia' or its Latin equivalent politia. The Latin word Politia stands for State or administration. The word police, however, today, is generally used to indicate the body of civil servants whose duties are prevention and detection of crime and enforcement of laws.

Police is one of the means by which the State seeks to meet its obligation to protect some of the fundamental human rights–right to life, liberty and security of persons, right to a fair trial, equal protection of law. Indeed effective order-maintenance and law-enforcement will enable people to enjoy fully not only their civil and political but also social and economic rights. Thoughtless and unlawful policing, on the other hand, can only cause suppression of those rights. Thus one often witnesses the paradox that human rights are protected by law and yet are often at risk from the law-enforcers.

In modern democratic societies, the police are vested with authority to use legitimate and situationally justified force against the law-breakers and offenders. This mandate of the police to use violence to curb or prevent violence raises the key issue that the police themselves should not indulge in unnecessary or excessive use of force. There are laws, rules and any number of instructions laying down norms for the use of force by the police. Rules in various Police Manuals expressly prohibit excessive or disproportionate use of force. The basic principles on the use of Force and Fire arms by Law-enforcement officials' (adopted in September, 1990, by the Eighth UN Congress on the prevention of Crime and Treatment of offenders) provide that "law enforcement agencies shall give special altention to the issue of police ethics and human rights, to alternatives to the use of force and fire-arms, including the peaceful settlement of conflicts, the methods of persuasion, negotiation and mediation, as well as to technical means with a view to limiting the use of force and fire-arms" [1] (Principle 20). However, abuse and misuse of authority and disproportionate use of force by the police frequently occur. The National Human Rights Commission is inundated with complaints of abuse of force and outrageous violation of human rights by the police. The victims in most of these cases are people belonging to poor and marginalised sections of the society.

The question now arises why the police resort to short-cut and extra-legal methods in the performance of their duties. Maurice Punch [2] in a perceptive study 'Conduct unbecoming' has said that the roots of police deviance are deep-seated. It results from, as noticed in different countries of the world, ‘ambiguous legislation, vulnerability to legal sanctions, occupational culture and pressure to produce quick results’. Very often the police come under tremendous pressure to achieve quick results. Because of the malfunctioning of the Criminal Justice system, the people expect, nay demand, of the police to take laws in their own hands, especially when dealing with the dreaded terrorists and hard-core criminals. There is demand for ruthless countermeasures, irrespective of the price that has to be paid in terms of human rights. Thus abuses of authority in such situations can flourish not only because of official negligence or acquiescence, but rightly or wrongly broad sections of the people consider that in spite of their excesses the police are carrying out an important and unpleasant task if both the state and society are to be preserved. It is the responsibility of the police leaders to check drift of this kind. There are many illustrations of the pressures and stark choices that confront police officials in dealing with notorious criminals or dreaded terrorists. One such illustrative case was the arrest of Abimayel Guzman Reynoso, the leader of Shining Path guerilla movement in Peru by the Peruvian National Directorate for Counter-Terrorism commanded by General Vidal Hererra. When Guzaman was arrested after prolonged and skilful police operation led by Vidal, the General, at considerable risk to himself, made the arrest public immediately. This ensured Guzman’s lawful treatment at the hands of the Peruvian police and also possibly prevented his unlawful execution . In this connection the euphemistic comment of General Vidal that “I am doing things as they ought to be done. There is a lot of pressure on me to do them differently" is for all police officials to remember, [3]

Sometimes a State faces situations of grave emergency when demands of order should override those of liberty. The rationale behind this is expressed in the maxim 'Salus Populi, Suprema lex est (safety of the people is the highest law). A state in such situations has to adopt special emergency measures curtailing right of the people, but the extent to which liberty can be limited is to be found in law, in the derogation provisions of international convenants and in the domestic laws of the State. Article 4 of the International Covenant on Civil and Political Rights provides that even in times of emergency there are certain non-derogable rights to life and liberty, freedom from torture, recognition as a person before the law, freedom of religion and conscience etc.

Further, the practice of policing to break law in the name of law-enforcement is totally unacceptable and intolerable and has no place in a democratic society governed by the rule of law. It is objectionable because it is arbitrary as a process and random in its effects. It is very aptly said that in a democratic polity, order maintained by repression and criminality, is the ultimate disorder because it creates a link between social order and atrocities.

Therefore, for ensuring adherence to human rights norms by the police, it is necessary to build up an organizational culture that frowns on abuse or misuse of force and authority. Emancipatory human rights training of the police personnel, particularly of the subordinate ranks, is necessary to make the police more professional, responsive and people-friendly. In this connection it may be mentioned that the National Human Rights Commission has prepared a model human rights training syllabus for police officers of all ranks in consultation with the Directors General of Police of all States and circulated it to all police training institutions. Appropriate training in human rights principles will have an elevating impact. However, the principles and standards of correct practice taught during the training have to be sustained by the an appropriate organizational culture that lays stress on promotion and protection of human rights. Constant supervision and unswerving adherence to human rights norms by senior officers is necessary to build up such an organizational ethos and make policing ethical, lawful and humane.

Policing is a field of activity in which interaction between the world of the powerful and the world of the powerless are manifested. Hence, theories of policing must emphasize principles of purpose and principles of values.

The statement of Common purpose and values of the London Metropolitan Police (1990), a document which provides the guiding principles for the police force contains the following:-

> "We must be compassionate, courteous and patient, dealing without fear or favour or prejudice to the rights of others. We must respond to well-founded criticisms with a willingness to change".

In this connection it is worth-mentioning that the United Nations Code of Conduct [4] for the Law-enforcement officers adopted by the United Nations General Assembly lays down (Article 2) that in the performance of their duties the law-enforcement officers shall protect and respect human dignity and uphold human rights of all persons. The code of conduct also prescribes that the law enforcement officers shall not invoke superior orders or exceptional circumstances as a justification for torture or other cruel, inhuman, degrading treatment or punishment (Article 5). Sometimes efforts are made to explain away excessive use of force or perpetration of torture by characterizing the serious offenders as only a few bad apples. This theory is too simplistic. Excessive use of force by the police is decidedly more complex and multidimensional than the few bad apples' theory would imply. Officers' personality features represent one element of the problem. Organizational culture and practices are also often responsible for police misconduct. Police deviance is symptomatic of a system-wide problem.

Coming to the Indian scene, one notes with dismay that the structure of the Indian police is governed even today by the Police Act 1861, an act passed by the British rulers to suit their imperial interests. A new police Act which can redefine the role of the police and lay down in no uncertain terms that the duties of the police include safeguarding the rights of the people is urgently necessary. The National Human Rights Commission in its Annual Report (1994-95) has endorsed the various practical recommendation of the National Police commission

(Vol-II Chapter XV) to insulate the police from extraneous pressures and yet make it accountable to the people. A neutral and non-political police can perform their duties in an efficient, impartial and humane manner and function as powerful protectors of human rights. This needs political will and commitment and also strong public pressure on the government to bring about systemic reforms in the police.

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13

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT — AN ASSESSMENT

The Terrorist and Disruptive Activities (Prevention) Act (Commonly known as TADA) was enacted in 1985 as a temporary provision for two years to cope with the rising terrorist violence in the Punjab. The preamble of the Act, 1985, stated "Special provisions are made for the prevention of and for coping with terrorist and disruptive activities and the matter connected therewith and incidental thereto". It was mentioned in "Objects and Reasons" of the Act that it was necessary to take note of the new and serious phase of terrorism and deal with it effectively and expeditiously. The present Terrorist and Disruptive Activities (Prevention) Act was originally enacted for two years in 1987. It has been extended from time to time.

Sections 3 and 4 of the Act define Terrorist and Disruptive Activities. Section 3 also provides for various stringent punishments. The activity which is sought to be punished u/s 3 has to be such which cannot be classified as a mere law and order problem or disturbance of public order or even tempo of the life of the community of any specified locality, but is of the nature which cannot be tackled under the ordinary penal law by the law-enforcement agencies. This is because the reach of the criminal activities of the terrorists is such that it goes beyond mere disturbance of public order and constitutes a challenge to the very integrity and sovereignty of the country and its democratic polity. The Supreme Court has said in the case of Kartar Singh*1 that "it is neither desirable nor possible to catalogue the activities which would bring the case of an accused under the relevant sections of TADA. Each case has to be decided on its own and no rule of thumb can be applied".

In Sanjay Dutt's case*2 the Supreme Court observed that the Act was needed in order to cope with the escalating terrorist activities in the country and there were materials and reports to justify the conclusion that foreign agencies were utilising terrorist groups for destabilising the country. Hence, "needs of the times" required a balance between the interest of the nation and the rights of a TADA accused.

NO PREVENTIVE DETENTION

It has to be kept in mind that it is not an Act for preventive detention. It is a substantive criminal law which defines certain new offences that arise from terrorist and disruptive and senditious activities and lays down procedures for regular trial and punishment for such offences. In TADA Act, 1987, the scope of the term 'abetment' has been enlarged to cover the rendering of financial and other assistance to the terrorists.

CRITICISMS AGAINST TADA

This draconian law has been assailed by its critics on various grounds. The first criticism is that the measure has been widely misused by the State Governments and has become counter-productive. Not more than a mere 1 percent of the cases under TADA have ended in conviction. It is perhaps better to do away with such a lawless law. The second criticism has been that the Act violates the principles of criminal law that a confession before a police officer is inadmissible in evidence and that the accused must know the names of the prosecution witnesses. The third criticism is that the Act makes the availability of bail extremely difficult. Another point of criticism is that mere possession of specified weapons in a notified area becomes punishable with jail term of not less than 5 years. This indeed is a draconian provision.

SECTION 15 OF TADA

Section 15 of TADA completely overrides the Indian Evidence Act. Section 15 says certain confessions made to police officers to be taken into consideration - "(1) notwithstanding anything in the Code or the Indian Evidence Act, 1872 but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Supdt of Police and recorded by such a police officer either in writing or by any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in evidence in the trial of such person for an offence under this Act and rules made therein".

Under the ordinary law of the land, a detenu may be held in police custody for a maximum period of 15 days before being transferred to judicial custody. Under TADA it is sixty days. The provision greatly enhances the possibility of police torture. Moreover, a detenu under the TADA may not be produced before a judicial magistrate as is required under the law. He may be produced before an executive magistrate or an administrator who is not answerable to the High Court. Under the TADA, people may be detained upto one year before being charged. This is a clear violation of Article 9 of the International Covenant on Civil and Political Rights to which India is a signatory. According to the Covenant, a person shall not be kept in detention without being given an effective opportunity of being heard promptly by a judicial officer. Elaborate trial procedures provided under TADA constitute negation of international standards of due process. Although guarantees of fair trial and due process may be suspended during the time of an official emergency, but such suspensions must be to the extent "strictly needed by the exigencies of the situation". During enquiries it has come to notice that many persons arrested under this draconian Act have spent years in jails awaiting trial. There is some hard truth in the assertion of the eminent lawyer Soli Sorabji that for every time a terrorist is arrested under TADA there are 100 innocent citizens arrested under the same Act and languishing in jails.

SECTION 19

Section 19 of TADA also restricts the right of the accused to appeal only to the Supreme Court, eliminating the High Court as an appellate body. The appeal is also to be filed within 30 days instead of normal 60 days. It becomes difficult for most people to file the appeal in time by engaging a capable lawyer. Filing an appeal to the Supreme Court involves considerable expenditure which many detenus find it beyond their means to incur. However, the Madras High Court has given a judgement that in exercise of superintending power under Article 227 of the Constitution it can interfere under certain circumstances and modify the order of the designated court, despite Section 19 of TADA. The Supreme Court has also admitted that the appeal to it is beyond the means of most of the citizens. Adequate provisions for appeal is essential because a designated court is even empowered to award death penalty. Under ordinary law death penalty awarded by a lower court is subject to the confirmation by the High Court. Now the Supreme Court has ruled that the designated court has no power to remand the TADA accused to custody, if the police fail to complete investigation within 180 days, or with the permission of the court in one year. But the court has made it mandatory that the accused himself should seek bail on the ground of the default on the part of the police.

The Supreme Court in the case of Niranjan Singh*3 held the courts should not allow misapplication of law by ensuring that "those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language". The court frowned upon invoking the deadly provisions of TADA for example, in cases of gang rivalry and other crimes which can be met under the ordinary penal laws. The approach of Niranjan dicta got re-affirmed in the case of Dilawar Hussain *v/s* State of Gujarat.*4 It stated that using a law like TADA to handle communal riots are invalid and unacceptable since intention of the legislature was to confine the applicability of the Act to secessionist and terrorist activities against the State and not to cover ordinary crimes for which provisions exist in the Indian Penal Code.

ANTICIPATORY BAIL

The TADA has also curtailed the provisions of anticipatory bail contained in Section 438 of the Cr. P.C. It is decided that the designated Courts would not have the power to consider the applications for anticipatory bail and the constitutional validity of the restriction imposed by Section 20(7) of the Act was upheld in the case of Sampadmal Jain *v/s* State of Assam. The court held that the provisions of TADA denying the application of the provisions of anticipatory bail were not in violation of Article 21 of the Constitution. The court pointed out that the powers of the High Court could not be limited under the TADA, 1987, so far the powers of the court under Article 226 are concerned, but it cautioned that "judicial discipline and comity of courts require that High Courts should refrain from exercising the extra-ordinary jurisdiction in such matter".

Because of terror and intimidation caused by the terrorists, it was becoming very difficult to record evidence by normal procedure. Witnesses needed protection from retribution by the terrorists. TADA provided for in-camera trial. The concept is not new.

Section 327 of the Cr. P.C.. was amended in 1983, to provide such trials in rape cases. According to Home Ministry, under title 18 of the United States Code annotated there is a section (3521) which permits complete concealment of the identity of witnesses in organised criminal activity. In USA closure of courts has been held to be justified for protection of witnesses, in spite of the fact that in the United States, unlike in India, public trial is deemed to be constitutionally guaranteed.

SECTION 5

Section 5 of TADA makes possession of certain unauthorized arms in specified areas an offence punishable with imprisonment. In effect, Section 5 creates a conclusive and irrebutable presumption arising from the mere fact of possession, irrespective of the nature and quantity of arms in possession of the person and irrespective of the intention of that person to use arms and ammunition found in his possession for terrorist acts or disruptive activities. The vice of Section 5 is that it is wide and indiscriminate in its operation and covers both authorised and legitimate possession of arms and ammunition as also possession of arms and ammunition intended for use for terrorist activities. The literal interpretation of Section 5 without any qualifications militates against the basic principles of criminal jurisprudence of presumption of innocence. Section 5, in effect, transforms the presumption of innocence into one of guilt.

CONSCIOUS POSSESSION

While interpreting Section 5 of TADA the Supreme Court in Sanjay Dutt's case held that in the prosecution of an offence punishable U/s 5 of the Act, the prosecution is required to prove that the accused was in "conscious possession" of unauthorized arms and ammunition, bombs and other explosive substance in a notified area No further nexus with terrorist and disruptive activities is required to be proved by the prosecution in view of the statutory presumption. The accused, however, can rebut the statutory presumption by proving that his possession of arms is wholly unrelated to any terrorist or disruptive activity. If he can do so, he will be tried under the less stringent provisions of the Arms Act. This is no doubt a burden on the accused. The burden on the prosecution is lighter. What the prosecution is to bring home is conscious possession without the authority of law in a notified area. It does not have to prove the nexus of the accused with terrorist or disruptive activities. Regarding the notified area, the court has ruled that the accused cannot question whether declaration of an area as notified by the Government is honest or not. Here the subjective satisfaction of the government alone matters. This is rightly so because the alternative would imply a challenge of every TADA detention.

In Northern Ireland, to deal with escalating terrorist violence various stringent laws have been passed. Under Prevention of Terrorism (Temporary Provision) Act of 1984 of United Kingdom, exclusion/deportation can be made by the executive without affording any opportunity to the person concerned. Even failure to give information of an act of terrorism has been made a criminal offence with imprisonment upto five years and six months on summary conviction. But none of the stringent laws passed in Northern Ireland creates an irrebutable presumption of guilt merely on possession of arms. The courts in Northern Ireland have insisted on prosecution discharging the burden of proof and permitted the accused to establish the defence that the purpose of unauthorized possession of arms was not to indulge in terrorist activities.

In the case of Maharashtra Legislator Hitendra Vishnu Thakur*5, the Supreme Court ruled that detenus will have "indefeasible right" for bail, if the change-sheet is not filed within 180 days. In that case, the supreme Court also observed that the designated court would act as a Post Office if it acts merely on the statement of the investigating agency. The designated court should consider the evidence available on record carefully and apply its mind to see whether the provisions of TADA, even prima-facie, are attracted. "Otherwise, the designated court would be doing more to keep the challenge coming from terrorists activities rather than deterring such activities". Invariably the court noted that investigating officers at some stage choose to add an offence under TADA while opposing an accused person's bail application.

To ensure that cases under TADA are registered only after due consideration and application of mind, the amendment Act of 1993, makes it compulsory that an officer of the rank of Supdt of Police must agree to the registration of an offence under TADA and the Commissioner of Police or DGP must sanction the prosecution after perusal of the connected papers and applying his mind.

The Chairman of NHRC in a letter dated 20th Feb, 1995, to all Members of the Parliament had stressed that the Act is a temporary piece of legislation and its life is due to expire on 24th May, 1995, unless the Parliament in its wisdom decided to extend the same. The letter added that "The Commission has thought it appropriate to appeal to the law-makers of the country to take into consideration these features and to bring to an end this very draconian legislation by not granting it any fresh lease of life. The plea that without this special law the integrity of our motherland would be in jeopardy is a stand without merit".

Indeed no Indian legislation has earned so much notoriety as TADA at home and abroad. In the National Human Rights Commission many cases of unjustified detention of innocent citizens are coming to our notice. This odious piece of legislation should be repealed. 'It is incompatible with our cultural traditions, legal history and treaty obligations'. If deemed absolutely necessary, the Central Government may consider incorporating the different provisions of TADA (not the objectionable ones) as new sections in I.P.C., Cr. P.C. and Evidence Act separately.

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4. (Air 1991 SC 56)

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SECTION 3

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CHILD LABOUR IN INDIA

Child Labour is one of the very pressing issues currently confronting India along with many other South Asian countries. In India child labour is widespread and is increasing. The Planning Commission estimates that there would be about 20 million child workers by 2000 A.D., and this figure of 20 million provides the basis for government's planning. There are, however, studies to indicate that the official figures are a gross underestimation of the existing situation. In a study sponsored by the Labour Ministry, the Operation Research Group of Baroda placed this figure at about 44 million. 1981 Census revealed that 82% of India's 159 million school-aged children (aged 6 to 14) were not in school, indicating that they may be involved in some kind of child labour. In rural India, a child who does not go to a formal school is a working-child because he performs various odd activities like collection of water, fuel, maintenance of the house and other miscellaneous domestic chores. It has to be borne in mind that in rural sector the concept of a non-working and non-school going child does not exist.

Child labour is utilized in a very big way not in the government but in various private enterprises. There are parts of Indian economy where children do not work at all. Children do not work in steel mills, textile mills and big industrial plants. The Factory Acts ban employment of children in large factories. Paradoxically, in these industries both working conditions and wages are better and higher. Children however, are legally permitted to work in cottage industries, household and service sectors where wages are low, hours are long and working conditions not regulated at all. Specific sectors and areas where employment of children is very high include the match industry in Sivakasi, glass industry in Firozabad, brassware industry in Moradabad, carpet industry in Mirzapur, Jammu & Kashmir, lock-making industry in Aligarh and slate-making industry in Mandasaur. Thus the Dickensian world of child labour is spread all over India and not limited to one region alone.

Most of these children work for long hours for a small pittance in extremely miserable, exploitative and unsanitary conditions. In the agricultural sector also with the consolidation of landholdings and mechanised farming, a large number of people work on daily wages on other people's lands. It is common for adults in rural areas to be hired on condition that their children also accompany them and work for same long hours.

The National Human Rights Commission in its Annual Report (1994-95) has underscored the fact that it is not the absence of law or treaties that is responsible for the persistence of this debilitating practice. A number of legislations already exist for the prohibition and regulation of child labour. Apart from the prohibitory provisions under the various labour laws like factory Act 1948, Mines Act, 1952, Bidi and

Cigar workers (conditions of Employment) Act, 1976, child labour is prohibited in scheduled occupations and processes under the Child Labour Prohibition and Regulation) Act, 1986. In the Memorandum of Action taken on the Annual Report of the NHRC, the Ministry of Home Affairs has mentioned that the government is examining a number of suggestions with a view to amending and lending more teeth to the Child Labour (prohibition and regulation) Act.

INDIAN CONSTITUTION

The Indian Constitution provides an impressive set of rights for children, some of which are not available even to the adults. Article 24 of the Constitution prohibits employment of children below the age of 14 years in any factory, mine or other hazardous activity. There are provisions in Part IV of the Constitution dealing with child rights. Article 39 of the Indian Constitution lays down that childhood and youth should be protected against moral and material abandonment. Article 45 provides that the State shall endeavour to provide within ten years from the commencement of the constitution free and compulsory education for all children until they complete age of 14. Article 37 of the Constitution which makes the Directive Principles non-enforceable through the court, also stipulates in unequivocal terms that "these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." The failure of the State to provide free compulsory education for all children within a period of ten years from the commencement of the Constitution has compelled the Supreme Court of India to declare the

Right to Education as a part of the Fundamental Right to life (Article 21) as without education life cannot be lived with dignity.

The Supreme Court in its judgement in Unnikrishnan JP *vs* Andhra Pradesh (1992) has observed that "the citizens of this country have a fundamental right to education." The said right flows from Article 21. This right, however, is not an absolute right. Its content and parameters have to be determined in the light of Articles 41 and 45. In other words, every child of this country has a right to free education until he completes the age of 14 years. Thereafter right to education is subject to the limits of economic capacity and development of the State. "Article 32 of the UN Convention on 12 Rights of the Child which was ratified by India in December, 1992, provides that "the State parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with the child's education and to be harmful to child's health or physical, mental and spiritual and social development". A strong political and societal will to enforce these legal and constitutional provisions has been found missing

In June, 1995, during a surprise visit by an investigation team of NHRC to Firozabad, where there is a large concentration of child labour in glass industries, it came to light that the Labour Enforcement officer of the district as well as Assistant Director of Factories, Kanpur, carried out a number of inspections of the different glass-producing units of Firozabad. Though as many as 178 cases were initiated for prosecution and 54 prosecutions have been launched for violations of the Child Labour Act, 1986, yet so far only one case has ended in conviction. The reasons for acquittal in most of the cases was lack of the proof of the age of the children and non-availability of records containing names and other particulars of child labourers in the factories. Fake names and addresses were given to the raiding parties and later on other persons were produced in the court in their place. It could also be gathered that information about raids by inspection teams, was leaked out to the management of the factories through their sources in advance, resulting in non-apprehension of child workers. Therefore, vigorous and determined enforcement of existing laws and not enactment of more draconian provisions is the need of the hour.

It can be mentioned in this connection that in India there is not one clear legal definition of the child. The legal definition of the child varies with the specific legislation. The Census of India speaks of persons below the age of 14 as children. Under the Juvenile Justice Act, 1986, a juvenile is a boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years. Under the Child Labour (provision and regulation) Act 1986, a child is one who has not completed his fourteenth year of age.

CAUSES

Perhaps one of the main reasons behind the widespread prevalence of child labour in India is the fact that primary education is not compulsory. Children who are out of schools perform odd duties for long hours under subhuman conditions at wages which are exploitative. Parents of most of these children who themselves are poor and deprived of basic education find it difficult to send their children to schools. The hard fact, however, remains that unless children are able to go to schools, it will not be possible for them to break out of the illiteracy trap.

It is a fact, as pointed out by Myron Weiner, that the India Government spends less on primary education than most other Asian countries and "puts a disproportionate share of its educational resources on higher education, a political decision which has benefited the middle classes, while leaving the rural and urban poor educationally impoverished" (Myron Weiner-"The child and the State of India"). There is also no causal relationship between literacy and per capita income. India has an adult (over 14) literacy rate of 40.8 percent, while in China it is 72.5 percent, Burma 78.5 percent, Indonesia 74 percent, Sri Lanka 86.1 percent and Philippines 88 percent. Even in India, in Kerala, where per capita income is no different from rest of the country, the literacy rate (of those over 5) is 85 percent.

There is an ongoing debate whether compulsory primary education will act as a panacea for child labour problem. This point has also been raised in the Ministry of Home Affairs Memorandum of Action on the Report of the National Human Rights Commission. However, as Alec Fyfe [1] (child Labour Policy and Role of Education) after a study of the situation in Kerala, where primary education is near-universal and incidence of exploitative child labour very low, has pointed out that school attendance protects dangerous labour practices and sets limits on what type of work a child can do. Further, the study also points out that in Kerala over the years has developed a healthy culture of child education and it is this culture that mostly keeps children out of labour market and not strict enforcement of child labour legislation. Hence, it is necessary to build up this kind of culture and awareness throughout the country by sensitizing and mobilizing the civil society as well as people's representatives.

The National Human Rights Commission in its Annual Report (1995-96) has expressed the unequivocal view that the problem of child labour will persist until the free compulsory education for all upto the age of 14 years is realized. In a letter dated January, 11, 1996 addressed to the Presidents of major political parties in India, the Chairman of NHRC observed that, despite the provision of article 45 of the Indian Constitution, the grim reality is that today the number of illiterates in the country exceed the entire population of the country at the time of independence. For making primary education compulsory, there is need for strong political will and, if necessary, redeployment of national resources.

Another important factor is the large family size, often the direct corollary of poverty and illiteracy. In families with large number of children, parents often feel compelled to send one or more of their children to work since they cannot afford to send all children to schools. In this process the girls are in a particularly disadvantaged position. Very often to enable their brothers to attend schools, they are being sent to work.

Indeed, child labour has kept girls out of school. Employers are over-eager to employ young girls since they are paid less than boys and often employed at younger ages. In Sivakasi match industry most of the child workers are girls below the age of 14 and their wages are far below the agricultural wages of the region. The result is that female attendance in primary schools is low and consequently female literacy remains low. The percentage of adult female literacy to the total female population of the country is under 40 percent. In Andhra Pradesh it is 33 percent, in Uttar Pradesh 26 percent, in Bihar 23 percent and in Rajasthan 20 percent. These are also States with a very high incidence of child labour[2].

Actually poverty is not, as has been pointed out by a perceptive observer [3] (Foneska Leo-Child Labour should this evil continue?), the cause but often the consequence of child labour. Child labour perpetuates poverty on a large scale as a large number of children lacking in skills and education grow up as unskilled workers with large families and then send their children to follow the same benighted course.

Again child labour is wide spread in India and many South Asian countries because employers find it inexpensive and extremely profitable. Children are just paid a fraction of what an adult will be paid for the same job. Children work for long hours with small wages and are more docile and easier to manage than adults. In a survey done of carpet-weaving workshop owners of Pakistan, as mentioned by Susan Crawford [4] the majority of owners admitted that availability of cheap child labour in the area was the main reason for selection of a particular area to start their business. They hire children as labourers because they work for longer hours with lower wages and are generally more obedient. They also feel that they are indeed doing a good turn to these children, who would not anyway get any opportunity for education, by providing them money which their families need.

INITIATIVES OF NHRC

The NHRC has taken some significant steps for the elimination of child labour in hazardous industries. Sometime in the month of December 1994, a high-level team of the Commission visited Firozabad in Uttar Pradesh for an on-the-spot study of the problem in glass industry there. It is estimated that out of more than 2.5 lakh workers in organised and unorganised sectors in glass industry, about 25 percent are children, working in dusty and polluted environment which is extremely injurious to their physical development. Further, inadequacy of nutrition and paucity of health cover expose them to great physical and mental trauma. In a meeting with the Chief Secretary, Uttar Pradesh, the Commission raised the issue of child labour in glass and carpet-weaving industry and advised the State Government to formulate schemes of elimination of child labour in such industries. The State Government has now prepared an integrated programme for elimination of child labour in glass industry. The project aims to rehabilitate some 50,000 children at an estimated outlay of Rs. 61 million. The approximate time-span for the implementation of the project is about six years. Already the Union Ministry of Labour has released a sum of Rs. 10 lakhs to the State Government to start the project. The State Government is setting up schools with financial support from the centre for the children weaned away from the glass industry. The programme also aims at mounting an intensive campaign to build up public awareness about the evils of child labour.

At the request of the National Human Rights Commission Prof. R.K. Mishra of Banaras Hindu University conducted a survey of child labour in the saree industry of Varanasi. The portrait of child worker emerging from the study is very depressing. Thousands of children from the poor Ansari (weaving community) families are drawn at the saree industry at the age of 6 or 7 years and are made to work for long hours extending up to 10 hours a day in unhealthy, ill-ventilated and damp rooms without rest or leisure. There is no concept of leave or weekly off. The wages are abysmally low. A child entrant starts with about Rs. 150/- a month and the monthly wage seldom goes beyond Rs. 300/- till the child attains the age of 13 or 14 and becomes a full-fledged weaver. Sometimes parents take an advance (from Rs. 2000 to 5000) from the employer against the services of their children. According to established usage, the services of the child cannot be withdrawn so long as the dues are not paid off by the parents. The mindset passed on from generation to generation in the community is that there is no use in wasting time on education. Children have no future except in weaving.

With India's ratification of the U.N. convention on the Rights of the Child (1989) there is renewed concern in governmental circles for honouring the country's commitments and obligations under the convention. The clear commitment of the government for elimination of child labour was articulated by the then Prime Minister when he in 1994 Republic Day parade speech announced a phased programme for elimination of child labour and set a time-frame for doing so. This is to be welcomed. A National Authority for Elimination of child Labour (NAECL) has been constituted for elimination of child labour in hazardous industries by 2000 AD. At present about 2 million child labour is estimated to be employed in hazardous industries and substantial resources (Rs. 850 crores) have been allocated towards this goal. The problem of the remaining 18 million (even accepting the government figure of 20 million) has also to be addressed. Otherwise, there is danger that these children may switch over to the vacant slots created by the rehabilitation process.

The Government's programme of nutritional support to primary education to improve enrolment, attendance, retention of students in primary classes is a step in right direction. In a rich country child labour is illegal because it is aberrant, but in developing countries where it is a common phenomena a different approach is perhaps needed. Along with free education there should be other collaborative measures like providing free meals in school to make sure that children take advantage of it.

There is now a strong international business pressure on India to eliminate child labour from industries like carpet manufacturing. In 1993, India-German Export Promotion Project, through an agreement with several carpet manufacurers, established 'Rugmark' Foundation which will certify carpets made without child labour. Rugmark Certificate is reserved for the products of those manufacturers who agree not to employ children below the age of fourteen in their workshops. International pressure, no doubt, does focus public attention on the issue of child labour. However, the prime need to work out alternative transitional programmes for affected children cannot be overemphasized. Without that the outcome of such pressures will be to drive out children from one industry to another which is more hazardous.

Child labour problem in India is an alarming one and constitutes an egregious violation of children's rights. Strong political and societal will be needed for combating and eliminating this scourge in a phased manner. For achieving this goal governmental efforts have to be supplemented by a wide range of initiatives from the non-governmental organizations and a strong people's movement has to be built up against this outrageous system.

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3. Foneska Leo-'Child Labour-should this evil continue?.
4. Susan Crawford-Child Labour in South East Asia'.

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CHILD RAPE

Of late, there has been a sharp rise in the incidence of child rape in the country. Statistics furnished in the publication 'Crime in India, 1993' prepared by the National Crime Records Bureau (Ministry of Home Affairs, Government of India) show that during the year 1993, 634 cases of child rape were reported as against 532 cases of 1992. The victims of child rape increased by 19.2 percent during the year 1993. Child rape victims accounted for 5.2 percent of the total rape victims. In Delhi itself, as the Home Minister reported in the Parliament, as many as 703 rape cases involving minor girls were reported during the last four years.

However, these figures, though disturbing, do not reveal the correct position. Large number of cases go unreported and many unregistered by the Police. Indeed, because of social stigma and shame attached to the victims, rape remains one of the most misunderstood and under–reported crimes. In a study of rape cases in U.S.A. S.C. Smithyman1* says that for every 100 rape cases only 25 are reported to the police, only 13 persons are arrested, 9 persons prosecuted and less than five are convicted. The National Crime Victims Survey in Australia found that only 32 percent of victims of rape or attempted rape had reported the crime. In India also the actual incidence of crime, according to a conservative estimate, is ten times more than what is reported. There is indeed serious dearth of empirical research on the subject of child rape. A study on the nature and pattern of rape cases in Delhi over a period of 25 years from 1960 to 1984 showed that most of the victims of rape were between 12 to 16 years of age while the rapists were more aged. Majority of these rapists as well as victims come from socio-economically depressed segments of society living in slums and in most of the cases culprits were known to the children.

It will also be a mistake to look upon child rape as a violent disruptor of normal family life. Actually poor, abandoned and kidnapped children outside the pale of family protection are more vulnerable to rapes. Many of these cases of rape go unreported as the unfortunate victims are not in a position to approach any source of help. Studies conducted on child prostitution have shown that many of the victims had initially been abused and raped before being forced into the flesh trade. A study done by the Madras Society of Social Work (1990) revealed that a good number of those interviewed claimed that their first sexual contact was as a minor and forced. The point to note is, as mentioned by a social activist Mythili Shivaraman, who has worked with cases of child rape among the working classes in Tamilnadu, that "uncared-for, un-rehabilitated child victims form source of recruitment to prostitution. The fact that minor prostitutes fetch a higher price than adults make vagrant children highly vulnerable and a prize catch to the flesh trade".

Indeed, child rape is also one of the most grosteque variants of child abuse which is now widespread in the country. The victims of child rape also include girls below 16 who have been raped by their fathers. This is a kind of custodial rape that has not so far received adequate attention from the social activists. Because of silence born of fear and shame, this kind of child abuse can go on for years without any punishment and without any relief to the child.

INVESTIGATION

Victims of child rape cases suffer shattering physical and psychological trauma and hence investigation of child rape cases requires extra-sympathetic handling of the traumatised victims. Investigators must be supportive and try to help the victims to overcome shame, nervousness and reluctance. It is noticed that during investigation victims are often summoned to the Police Stations for interrogation by the investigating officers. This is violation of the provision of section 160 of the criminal procedure code which provides that "no male person under the age of 15 years or woman shall be required to attend at any place other than the place in which such male person or woman resides." It is the responsibility of senior police officers to see that the investigating officers scrupulously abide by this provision. Non-compliance should be made punishable. Further, questioning of the child victim should be reduced to the minimum and such questioning should be normally done at the place of her residence in the presence of her parents and guardians and, if possible, a social worker of the locality.

The Law Commission of India in its 84th Report recommend that a child victim of rape should be interviewed by female investigating officers. Unfortunately, the number of women police personnel is totally inadequate in our country. It is almost less than 2 percent of the total police force. Women police officers are available only in big cities and in special wings of the Criminal Investigation Department. Therefore, substantial augmentation of the strength of female investigating officers in police forces of all States is imperatively necessary. Provisions should also be made for the presence of the guardian of the child victim during recording of her statement by the woman police officer.

It is also often seen that report of the medical examination of the rape victim is cursory and it is not sent in time. Medical evidence is a crucial piece of information to establish the case of rape. The police investigator has to rely upon the examining physician to collect the best evidence in the case, evidence from the body of the victim. The Law Commission in its report (1980) recommended some additions to the provisions in the CrPC, the most important being that the "medical report shall state precisely the reasons for each conclusion arrived at."

It may be mentioned in this connection that in the United Kingdom and the USA, there are many 'Rape Crises Centres' which send experts to deliver lectures at Medical Schools and Colleges. Many hospitals in the USA now maintain "sexual assault evidence kits" containing items like the instruction-sheet for the examining physician, packages of sterile cotton swabs and envelopes marked for clothing, fibres, hair, secretions, etc. It is necessary that such evidence kits should be maintained in our hospitals and medical centres.

The victim of child rape also encounters a harrowing experience when she gives evidence in the court at the time of trial. Section 155(4) of the Indian Evidence Act permits the cross-examiner to ask the victim questions about her past character. The questions can be very embarrassing and place the victim under severe emotional strain. An amendment of this provision is necessary and has been recommended by the Law Commission of India in more than one of its reports.

Further, the trial of a rape case prolongs for years, though 309 CrPC provides for trial on a day-to-day basis. Prolongation of trial heightens the trauma of the child victim. Indeed, there should be all-out efforts to reduce the time–frame for disposal of these cases in view of the trying and agonising situation through which the victims and their family members pass through the trial stage. "A socially sensitised judge" in the memorable words of the Supreme Court, "is a better statutory answer against gender outrage than long clauses of complex section with all the protection writ into it.

DETERRENT PUNISHMENT

To overcome this problem, a time-frame for trial of rape cases should be fixed and deterrent punishment should be meted out to the offenders. The seminar on child rape organised by the national Commission for Women (October 7/8/1992) recommended that minimum punishment for child rape should be 10 years rigorous imprisonment with discretion to award lesser punishment for reasons to be recorded in writing. For custodial rape and gang-rape minimum punishment should be imprisonment for life. Indeed, it has been found that lengthy prison sentences have some behaviour–altering deterrent values. Many jurists and public men have even advocated capital punishment for the criminals who commit rape as it is an offence worse than murder so far its impact is concerned. The seminar of the N.C.W., further, recommended that since marriage below 18 years is prohibited under the Child Marriage Act, 1923, section 375 of the Indian Penal Code should be amended to prohibit and penalise sexual intercourse with or without her consent with a girl below 18 and not 16 years.

REHABILITATION

The problem of rehabilitation of the child rape victims hardly gets proper attention, Counselling service for child rape victims is generally unheard of in our country. In a few areas, volunteers of women organisations without any special training try to keep touch with the victims whose cases they handle. As the parents of the victims also suffer shock and become deeply upset, they find themselves incapable of properly handling the disturbed child. Actually, many of them more than the child victims require counselling for properly handling the situation and not to instil in the child's mind a sense of lasting shame and damage to family reputation. An important aspect of this kind of counselling exercise should be to stress the fact that rape is an act of barbaric violence and no sense of shame or dishonour is attached to it and should not spoil the future of the girl. Financial help to the victims of child rape is imperatively necessary as most of them come from poor families. At present, Section 357 CrPC provides for compensation to the victims of crime by the offender and not the State. A comprehensive scheme for State compensation to the victims of Child rapes should be introduced as part of the substantive law. Further, if the government accepts the principle that child victims will be given admission in schools, vocational training institutions and institutions of higher learning and later placed in jobs on a preferential basis, it will go a long way in changing the attitude of the family towards the victims who will not be then viewed as mill-stones round the neck of the family.

The long-term task, however, will be sustained efforts to change the social perceptions that view rape as something that shames and pollutes a woman and heaps on her ultimate dishonour. For achieving this end, serious and well-directed efforts by enlightened social groups and NGOs are called for. Rehabilitation at personal level will not be effective without change of social mind-sets and perceptions.

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CHILD PROSTITUTION

Child prostitution is on the rise in many Asian countries like Thailand, Hong Kong, Philippines, Sri Lanka and India. Today about 15 percent of India's, nearly two million, prostitutes are believed to be children. 30 percent of all prostitutes in the six major cities of India, namely, Calcutta, Bombay, Delhi, Madras, Bangalore and Hyderabad, as revealed in a report (1994) on child prostitution prepared by the Ministry of Human Resources Development, Government of India, were under 20 years of age. 39 percent of these women entered prostitution before they were 18 years old. The report bases its findings on a survey of prostitution which the government of India in 1991 initiated through the Central Social Welfare Board in six metropolitan cities of India.

The survey also analysed the sources of origin of the prostitutes. It was estimated that 86 percent of all prostitutes in these cities come from Andhra Pradesh, Karnataka, Tamilnadu, West Bengal and Uttar Pradesh. The overwhelming role of trafficking in bringing girl children into the brothel areas of these cities is proved by the demographic break-down of the prostitute population combined with the testimony of social workers. The study has shown that only 4.9

percent of the prostitutes in Calcutta were born within the city and no less than 70 districts in the country supply prostitutes to Delhi.

The survey also revealed that two thirds of the original families of the prostitute population lived below the poverty line and 60% of the prostitutes covered in the survey belonged to the Scheduled Castes, Schedule Tribes and the backward classes. Further, majority of the prostitutes were illiterates and without husbands. The survey thus clearly indicated that a single status accompanied primarily by destitution and ignorance/illiteracy is a dominating characteristic of the prostitutes in India.

Nepal is the largest identifiable source of child prostitutes to Indian brothels. An UNICEF review indicates that from 5000 to 7000 girls are trafficked into India from Nepal every year. Nepalese girls are desired for their fair skin. The UNICEF survey mentions that Nepalese girls and young virgins sell for at least Rs. 6000/- in Indian brothels on their first night. Virgins are prized because of the prevalence of the myth that sleeping with virgins will cure sexually transmitted diseases. Fear of AIDS has also raised the demand for virgins. Traffickers, who make astronomical profits on young Nepalese girls manipulate Nepal's underdeveloped economy to their advantage. Families and daughters from communities across Nepal in dire economic straits are easy victims for these traffickers who offer the victims either jobs or proposals of marriage. Sometimes retired prostitutes who want to become madams bring girls to the cities by offering them vague offers of employment.

Desperate economic straits may lead some parents to sell their children.

Bombay has the highest concentration of Nepalese girls and women in prostitution. According to one estimate, there are about 20,000 Nepalese women and girls in city's flesh trade. Many of the victims are from the remote hill villages and poor border communities of Nepal, who are lured from their villages by local recruiters, relatives or neighbours promising them jobs or marriage and sold to brokers who deliver them to the brothel-owners in India. 60 percent of these girls may have contracted H.I.V.

Majority of the prostitutes, as revealed in the survey done by the government earn less than Rs. 3000/- per month. Prostitutes in Delhi and Bangalore are comparatively better paid. It has also been found that poor prostitutes have to share almost 50 percent of their income with the brothel-keepers who in his/her turn have to share it with the pimps, procurers, local dons and the police. Thus a vested interest has grown up for the continuance of this trade and the entrenched interests often act brutally and do not hesitate to use force to ensure that the reluctant prostitutes do not get out of their clutches and leave the profession voluntarily.

GIRL CHILDREN

Girl children of the prostitutes pose another serious problem. Most of the prostitutes want education or some vocational training for their girl children and their settlement in life through marriage. If the problem of the girl children is not tackled urgently through marriage or alternate vocations, many prostitutes feel that there would be no option before their daughters than to join the profession. Prostitutes raise their children as lovingly as possible is proved by 32 percent rise in literacy between the generation studied by the Government of India and that of their children. It is a fact that daughters of the prostitutes often suffer sexual abuse at the hands of the brothel-owners or pimps. The economic needs of the prostitute–mothers also account for the entry of their daughters into prostitution. As a last resort, a daughter is an insurance policy for the older prostitutes.

The Supreme Court in a public interest petition called Gaurav Jain petition observed that "children of prostitutes should not be permitted to live in inferno and the undesirable surroundings of prostitutes' homes". The court ruled in favour of shifting these children to existing juvenile institutions. There was implicit assumption that these juvenile institutions would be better run and organised and help the rehabilitation of these children. Unfortunately, many of these juvenile institutions are in a bad shape and fail to fulfil the purpose. Children sometimes run away from these homes to return to their old surroundings.

IMMORAL TRAFFIC PREVENTION ACT

For dealing with the problem of immoral trafficking of women, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1986 and retitled as the Immoral Traffic (Prevention) Act, 1956. The amended Act continues to prohibit prostitution in its commercialised form without making prostitution per se an offence. Section 2(b) of the Act reads

"Prostitution means the sexual exploitation or the abuse of persons for commercial purposes and the expression 'prostitutes' shall be construed accordingly." The Act prescribes stringent action against those inducting children (below 16 years) and minors (16 to 18 years) in the offence of procuring or taking a person for the sake of prostitution. If the offence has been committed against a child, the punishment is rigorous imprisonment for a term of not less than seven years which may extend to life. The Act further provides that where a child or a minor found in a brothel is, on medical examination detected to have been sexually abused, it shall be presumed, unless contrary is proved, that the child or minor has been sexually exploited for commercial purposes. The Act provides for setting up of protective homes for adult prostitutes rescued from brothels.

Enforcement of the Act by the State government has, however, been far from being satisfactory. Often the prostitutes and customers are arrested without thorough and sustained investigation into the criminal aspects of trafficking, violence and commercial exploitation of women. As a result, the basic structure of this cruel and exploitative system remains intact and continues to flourish. Cases of clandestine interstate and trans-border trafficking in women are seldom thoroughly investigated. Aside from Nepal, a number of hapless young girls from Bangladesh are lured into the brothels of India and Pakistan.

According to one survey (Dasgupta), Bangladeshi girls and women constitute about 11 percent of the total prostitutes in Calcutta. Difficult economic conditions in Bangladesh, and at times oppression and torture of Bangladeshi girls by their husbands and families, makes Bangladesh a favourite operating ground for the traffickers. Many of the prostitutes in Calcutta brothels are poor Moslem girls who have been picked up by the traffickers with offers of marriage or employment. Some of them with children were abandoned by their husbands, and in desperate need to support their children were left with no other alternatives but to enter the profession.

INVESTIGATION

Vigorous investigation is necessary to smash the operations of these vice rings. Section 13(4) of the Immoral Traffic (Prevention) Act, 1956, empowers the Central Government to appoint 'trafficking police officers' with jurisdiction all over the country for investigation of cases of inter-state trafficking in women. No step has so far been taken by the Central Government in this regard. A central investigation agency, preferably, Central Bureau of Investigation should be directed by the Government to perform the functions of trafficking officers as envisaged under this provision of the Act. Further, the existing law did not provide for the welfare and development of the prostitutes and their children. It is learnt that the Central Government had requested the National Law School of India, Bangalore, to conduct a thorough study and review of the Act and make necessary recommendations. The National Law School has already sent its recommendations for thorough revision of the Act. Further follow-up action by the government is called for.

Indeed, child prostitution is an outrageous evil. There are violations in various ways of the basic rights of the children, but nothing is more horrendous than exploiting them sexually and engaging them in prostitution. Using children to satisfy an adult's sexual needs is something so cruel and mean that it does not exist even in the animal kingdom. Children in prostitution are pathetic victims of power and cruelty in a male-dominated society and greed-driven economy.

Child prostitution thrives in India because adult men and women across Southern Asia make a financial profit by sexually exploiting children, thus denying them all the human rights to which they are entitled under the Convention on the Rights of the Child.

India has ratified the UN Convention on the Rights of the Child. Article 34 of the Convention lays down that the "states parties will undertake to protect the child from all forms of sexual exploitation and sexual abuse". It has thus become an international obligation for the country to work out a package of well-thought-out measures to combat this problem. Economic distress and lack of options are two major factors behind induction and continuance in profession of young girls. The Survey Report of the Central Social Welfare Board highlighted specific areas as high-supply areas. A survey conducted by a non governmental organisation of Calcutta in late 80s identified that 23 percent of Calcutta prostitutes originated from Murshidabad district. Determined action for locating and economically developing these vulnerable source areas is necessary.

INTERVENTION STRATEGIES

Further, as directed by the Supreme Court, the State Governments must implement vigorously the provisions of the Immoral Traffic Prevention Act and the Indian Penal Code on the subject. An act of sexual intercourse with a child (below the age of 16 years) should be treated as an offence of rape u/s 375 IPC. For vulnerable areas where prostitution, and particularly child prostitution is prevalent, the State governments must appoint special police officers under section 13 of IIPA. The special officers should be assisted under section 13(3) of the Act, by an advisory body consisting of some leading social welfare workers of the area. This will create a mechanism at field level to take stock of the problem and initiate appropriate action. Under section 14 of ITPA a special police officer or subordinate officers empowered by him can arrest a person without a warrant and enforce other provisions of the Act. However, effective implementation of the provisions of ITPA needs much greater police vigilance. It is the police collusion which often enables the pimps and traffickers to operate without fear. Again cross border trade in women is not possible without the connivance and active collaboration of the police and the Border Security Forces.

Other important planks of intervention strategies in this regard should be improvement in the functioning of rescue homes, devising of viable training-cum-income–generating schemes, which would make poor young girls resistant to this kind of exploitation and an information campaign to educate the vulnerable groups regarding the modus operandi of the pimps and brokers involved in the business of child prostitution.

SECTION 4

17

PRISON REFORMS

In its annual Report (1993-94) the National Human Rights Commission expressed deep concern about the appalling conditions in Indian jails. There are serious problems of overcrowding, lack of sanitation, poor medical facilities, inadequate light and diet in most of the jails in the country. These serious deficiencies are further compounded by unconscionable delay in the disposal of cases for various reasons and utter mismanagement in the administration of jails. During this year (1994-1995) the Commission visited prisons in different parts of the country and suggested corrective measures by the State governments in whose jurisdiction the jails are located. Actually, visiting of jails is one of the important statutory functions of the Commission. Section 12(c) of the Protection of Human Rights Act, 1993, authorises the Commission to "visit under intimation to the State government any jail or any other institution under the control of the State government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon."

The Commission during its visits to different jails noted with dismay squalor, congestion, maladiminlstration in most of the jails. In the newly constructed Central jail in Patna, the management was denounced by the prisoners as brutal, uncaring and corrupt. However, a few jails like the Central jail in Vellore were found well-kept and fairly well-administered. By and large, positive experiences were the exceptions rather than the rule. The Commission has strongly felt that the prison system in the country is in dire need of reform. "At present it is mired in altitudes and practices that are antiquated at best, but often border on the intolerable."

The prison administration in the country even now is largely governed by the Prisons Act, 1894 (Act IX of 1894). The objectives and policies reflected in the legislation formulated during the British regime have now become not only outdated and antiquated, but have been obstructing proper development of prison administration on modern lines in the country. It may be recalled that the Indian Jails Committee of 1919-20 with Alexander Cardew as its Chairman made a comprehensive enquiry into the state of prisons in the country and identified reformation and rehabilitation of prisoners as the main objectives of punishment. The Committee laid stress on proper classification and separation of the inmates of prison, healthy reformatory influences, expert superintendence and selection of proper jail staff. After the advent of independence, a number of jail reform committees and commissions were set up in different States with a view to humanising condition in prisons, but the Prison Act, 1894, remained substantially unchanged. Minor amendments of the Act made by some States touched only the fringe of the problem. The prison administration in India thus remains totally out of tune with modern penological thinking.

The All India Jail Manual Committee (1957-59) set up by the government of India made various recommendations pertaining to prison legislation. It also prepared a model Prison Manual which was circulated to all States for the purpose of revision of their jail manuals. The sad fact, however, remains that the jail manuals in most of the States have remained unchanged and unrevised. Even 47 years after independence, Bihar still has the same Jail Manual prepared by the British civilian J.A. Hubback in 1927. The obsolescence of such jail manuals was criticised by the Supreme Court in the well-known case of 'Sunil Batra *V* Delhi Administration.' Again there are wide variations in prison rules and regulations in various States and Union Territories.

The All India Committee on Jail Reforms (1980-83) under the Chairmanship of Justice A N Mulla made a thorough-going enquiry into prison conditions and submitted a number of concrete recommendations for jail reforms, which have remained mostly unimplemented. What is worse, no worthwhile attempt has been made to implement even some of them which do not have any financial implications. "Ministers, now or before, who were no strangers to prison torments, have done so little to reform conditions in prisons" was therefore the observation of the Supreme Court of India in the case of 'Hiralal *v* State of Bihar' (AIR 1977 SC 2236).

OVERCROWDING

Indeed the prison administration in the country is governed by archaic laws. Under the existing legal framework all types of offenders are huddled together in overcrowded and congested jails with no scope for their individualised study, diagnosis and handling for the purposes of correctional treatment. Most of the jails of the country are crowded to asphyxiation. In Tihar, against the declared capacity of 2487, the average prison population is over 8000. The position in many other jails of the country is no better. The All India Committee on Jail reforms (better known as the Mulla Committee) mentioned in its report that on 1st January, 1978, out of 2, 11, 963 inmates in all the prisons of the country as many as 1, 13, 777 (54 percent) were under-trials, while the total available capacity in the entire country for the prison population was 1, 79, 567. The position now has further worsened. Under-trials, many of whom are dumb, simple persons caught in the web of law, now constitute about 70 percent of the prison population of the country. Many of these under-trials who have come to the notice of the NHRC are rotting in jails for more than five years. "Law has become for them" in the words of the Supreme Court "instruments of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system."

Lodging of under-trial prisoners with convicted prisoners for long periods leads to contamination of crime. It is absolutely necessary that under-trial prisoners are lodged in separate institutions away from the convicted prisoners. Release of accused under-trial prisoners on personal recognizance should be encouraged. The Mulla Committee has also suggested amendment of the Criminal Procedure Code to provide that as soon as an under-trial prisoner completes the period of detention equal to half of the maximum sentence awardable to him on conviction, he should be released immediately and unconditionally. The noncriminal lunatics and children should not be sent to prisons at all. No separate institution has so far been set up for under-trial prisoners by any State or Union Territory. Requirements of under-trial prisoners, who are yet to be found guilty are quite different from those who have been convicted. From both the administrative and therapeutic angles, separate institutions for under-trial prisoners would go a long way in rationalising prison conditions.

The increasing number of deaths in jail custody is also a point for serious concern. The National Human Rights Commission has issued instruction to all State governments to report within 24 hours all cases of death in police and jail custody. During the period from April, 1994, to November, 1995, 201, cases of Jail deaths have been reported to the Commission by different States. Bihar and Delhi with 40 and 53 cases of jail deaths respectively, figure at the top of the list. The former Chairman, NHRC, Justice Ranganath Misra, had written to Lt. Governor Delhi and the Chief Minister, Bihar, drawing their attention to this disturbing trend. The Investigation team of NHRC enquired into some of the cases of jail deaths in Tihar and found that woefully inadequate medical facilities and maladministration were twin factors responsible for some of these deaths. Instances of torture by fellow prisoners also came to light.

Another frequent complaint one hears from prisoners is regarding the quality and quantity of food served to them. In the restricted environment of prisons, where the prisoners cannot get food of their choice and liking, diet assumes special importance. Diet of prisoners is regulated on the basis of different scales prescribed in the State Jail manuals. During visits to different prisons, the present writer has noticed that the arrangements regarding preparation and distribution of food, clealiness of eating places, management of kitchens are far from being satisfactory. The Mulla Committee in its report has been constrained to remark that in "an era when careful attention is paid even to the feeding of dairy cattle, prison kitchen and diet system have remained in utter neglect."

TRAINING

The present system and arrangements of training of the prison staff remain unsatisfactory. Most of the prison officers even in the ranks of Superintendents of jails are not cognizant of modern trends in penology and contemporary practices abroad for reclamation and rehabilitation of prisoners. The jail staff at lower levels do receive some training for performance of their custodial duties but remain unexposed to the current developments in the field of corrections. Some of them get coarsened and brutalised by prevailing practices in jails. The UN Expert Dr. Walter Reckless, who in the fifties at the invitation of the Government of India had visited India and given a report for prison development on contemporary lines pointed that the "great school of experience of seniors from which the new appointees pick up work can do immense harm to the untrained new entrants." They often imbibe wrong attitudes and learn questionable practices.

Indeed, prisons constitute a critical area of human rights concern. A person in custody in any civilised society cannot be reduced to the status of a non-person and hence the prison system must offer conditions that are compatible with human dignity and conducive to social mainstreaming. Persons in custody are entitled to all human rights, as the Supreme Court has laid down, other than those curtailed by the process of incarceration itself.

The National Human Rights Commission remains in constant touch with the State authorities for improvement of conditions in prisons. The Chairman of the National Human Rights Commission in a letter addressed to all Chief Ministers and Lt. Governors invited their attention to the distressing practice of prisoners languishing in jails beyond the dates for their release often because of the callous indifference and negligence of the authorities and referred to the decision of the Supreme Court in the case of Rudul Shah (1983 SC 141) that compensation has to be paid by the State Government to persons detained unlawfully beyond the dates for their release. He recommended setting up of a high–power Review Committee in each State to review the cases of prisoners who may be suffering the same tragic fate of Rudul Shah.

Recently a national conference on 'Human Rights in Prisons' was convened by NHRC which was attended by the Home Secretaries and Inspectors

General of Prisons of all States. A core committee has been formed after the conference to prepare the draft of a model Prison Bill which will then be circulated to State governments. A national consensus has to be evolved on the objective, scope, and specific provisions to be incorporated in the new law. Absence of a progressive legislation pertaining to prison administration stands as a roadblock to development of prisons in this country on modern scientific lines, once a model legislation on the subject is finalised for the country as a whole, revision of State Prison manuals would be possible within a time-frame.

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PLIGHT OF UNDERTRIAL PRISONERS

The plight of the undertrial prisoners in different jails of the country has evoked widespread concern. The presence of an excessive number of undertrial, remand and other unconvicted prisoners in jails often creates conditions causing blatant negect of human rights in the institutions where they are lodged. In recent years the number of undertrial prisoners has indeed reached an alarming dimension.

In India, there are now 85 Central prisons, 252 district prisons, 14 women's prisons and about 547 sub-jails. The exact number of prisoners in the country is not known. At the end of 1993, according to one estimate, there were about 196240 prisoners throughout the country; of them 137838 were undertrials. Indeed, in most of the jails of the country 70 to 75 percent of the prisoners are under–trials. And majority of these undertrial prisoners, as All India Committee on Jail Reforms (1980-83) better known as the Mulla Committee, noted in its report, were people from poorer and underprivileged sections of the society with rural and agricultural background.

In India, the Prison administration is governed by the Prisons Act of 1894. The Act is old and many of its provisions are outdated. Section 27 of this old Act provides that unconvicted prisoners are to be kept apart from the criminal prisoners. Many Jail Manuals also provide for strict segregation of under- trials from the convicted prisoners. Rules in Orissa Jail Manual provide that undertrial prisoners should be kept separate from the convicts and undertrial prisoners with previous convictions should be kept apart from those undergoing trial for the first time and juvenile undertrial prisoners should be separated from adult undertrial prisoners. But these rules are followed more in the breach. In most of the States or Union Territories, there are no separate buildings for keeping undertial prisoners and so willy-nilly they are confined for long periods in the same prison building with the convicted inmates. Segregation of the undertrial prisoners in separate wards in the same building is also far from being an effective method. In some prisons, there are separate wards for undertrial prisoners, but essential facilities and services like kitchen, hospitals are common. It is thus difficult to maintain segregation between undertrial and convicted prisoners.

Lodging undertrial prisoners with the convicted ones leads to what is called, 'contamination of crime'. Many inexperienced young men coming in constant touch with hardened criminals get coarsened and spoiled. It is known that many of the gangsters recruit members of their criminal gangs from out of these borderline, yet redeemable, offenders, admitted to jails. In many jails of the country, the undertrial prisoners are placed in charge of convict officers. Rule 441 of U.P. Prison Manual provides that convict officers shall be on duty in the undertrial wards. This rule not only militates against Section 27 of the Indian Prison Act 1894, but is contrary to the basic principles of sound prison management on modern penological lines. Again, constant movement of undertrial prisoners in and out of prisons creates problems for prison administration. Narcotics and other contraband articles are sometime sneaked into prisons through them and they also are carriers of contagious diseases.

It is seen that in most of the prisons, conditions for providing undertrial prisoners with suitable work on a voluntary basis are almost non-existent. Most of the undertrial prisoners spend their time in a very depressing state of idleness. At present, the prison administration is not able to provide suitable employment even to the convicted prisoners. So the vast army of undertrial prisoners go without opportunities for suitable work.

The number of non-criminal and lunatic undertrial prisoners is also astoundingly high in some of the jails. Apart from the undertrial prisoners, other categories of unconvicted prisoners include remand prisoners who have been remanded to judicial custody, but not served with charge-sheets to enable commencement of trial, persons under protective custody such as stray children and victims of rape, persons confined under preventive sections of the CrPC (Sections 107, 109 and 110). The Mulla Committee in its report was constrained to observe that preventive sections of the Code of Criminal Procedure, particularly section 109, should be reviewed and amended suitably to restrict their use only in genuine cases and the practice of using this section to swell up figures of apprehension by the police needs to be checked.

The National Human Rights Commission has received complaints from prisoners from many jails that they are not produced before the courts on the dates of hearing because of non-availability of the police escorts. The concerned police authorities point out that as no staff have been sanctioned and earmarked for escort duties of prisoners, they find it difficult to spare police escorts, especially when law and order problems take serious turn. Therefore, provision of separate staff for escorting prisoners to courts and hospitals has to be considered seriously.

The All India Jail Manual committee (1957-59) strongly recommended that there should be separate institutions for accommodating undertrial prisoners with adequate security and segregation facility at each place where a central or district prison is located. This is necessary to relieve pressure on Central or District Prison and work out arrangements for properly dealing with the undertrial prisoners. These institutions for undertrial prisoners should be located near the court premises to reduce the problems and hazards of transporting the prisoners.

A senior law-enforcement officer had given a bold suggestion [1] that there should be a judicial lock-up in each place where a criminal court functions and all such judicial lock-ups should be placed under the administrative and operational control of State High Courts. Each lock-up should have a custodian working under a Judicial Magistrate or a Judge presiding over a criminal court as the case may be. This will enable the undertrials to avoid the stigma of being bracketed with the convicted prisoners. This innovative suggestion which is in full conformity with the basic tenets of the Rule of Law deserves careful consideration.

OVER-CROWDING

Because of the overwhelming presence of large number of undertrial prisoners, most of the jails in the country now are crowded to suffocation. In Tihar, against the declared capacity of 2487, the average prison population is over 8000. During a surprise visit in Meerut Jail, it was found that against the capacity of about 650 prisoners, there were about 3000 prisoners. 80 percent of them were undertrials. The same is the situation in many other jails of the country. All types of prisoners are huddled together in overcrowded and congested jails with no scope for proper handling for the purposes of correctional treatment. Indeed, overcrowded prisons do not have the space, facilities and resources to provide prisoners with normal work, training and educational opportunities. It creates knock-on effects on other parts of the prison administration.

in the United Kingdom, Lord Woolf in his report on 'Prison disturbances'[2] correctly observed that "because of over-crowding, very often a substantial number of prisoners leave prisons more embittered and hostile to society than when they arrived". In his report, Lord woolf proposed that in order to achieve a humane and constructive prison system, there should be a legal ceiling on the number of inmates in each prison which the Home Secretary would be able to extend only by obtaining Parliamentary approval.

The main reason for this astonishingly large number of undertrial prisoners languishing in different jails of the country is the inordinate delay in trial and disposal of cases. In different jails there are a large number of prisoners rotting for more than five to six years because cases against them are dragging on interminably in law-courts. Even many who have been granted bails by the courts are not released because they are too poor to arrange for sureties.

The All India Committee on Jail Reforms (1980-83) suggested that as soon as an undertrial prisoner completes a period of detention equal to half of the sentence awardable to him on conviction, he should be released immediately and unconditionally. The Code of Criminal Procedure should be suitably amended to provide this. To review the cases of undertrial prisoners on a regular basis, there should be a Statutory District Review Committee comprising the District Judge, District Magistrate and District Supdt of Police. The committee will regularly review the cases of all undertrial prisoners and see that no undertrial prisoner is unnecessarily detained in prisons. Similarly, there should also be a State level Review Committee to review position of undertrials in the State as a whole and sort out problems among different departments resulting in delay in trials.

Recently in a writ petition (No. 559 of 1994-R D Upadhaya *V* State of Andhra Pradesh) the Supreme Court ordered speedy trial of cases of about 1930 undertrial prisoners who are in Tihar Jail for periods ranging from 3 years to 11 years. In respect of 880 murder cases, the Supreme Court ordered the Delhi

High Court to designate 10 additional District judges to take up trial of these cases. The Court ordered that in respect of cases regarding attempt to murder which are pending for more than 2 years, the undertrial should be released on bail to the satisfaction of the courts. Bail should also be forthwith granted in respect of other cases like theft, cheating, counterfeiting etc. If the undertrial prisoners are not able to furnish sureties, the trial court may consider releasing them on bail by obtaining personal bonds. The Supreme Court also directed that it is not necessary for the undertrial prisoners to move applications for bail. The courts, suo-motu on the authority of Supreme Court's order may now grant them bails. This is a bold and innovative judgement.

In another far-reaching judgement on a public interest petition, the Supreme Court has recently ordered the courts to release on bail all accused persons whose trials are pending for one year or more for offences, attracting imprisonment up to 7 years and who have already spent 6 months to a year in jails. The court has also dealt with compoundable cases pending for more than two years and cases of non-cognizable and bailable offences to be treated as discharged and the undertrials acquitted. Cases which are pending for more than a year where the legal punishment is below one year imprisonment would be closed and the accused would be acquitted by a court order. The court declared that it will not allow criminal prosecutions in the country to operate as "engines of oppression". This judgement, it is hoped, will usher in a new dawn for thousands of undertrial prisoners.

VOTING RIGHTS OF UNDERTRIAL PRISONERS

Recently the question of the voting rights of the undertrial prisoners has been raised and agitated before different fora. Section 62(5) of the Representation of People Act (RPA) 1995 provides that "no person shall vote in any election if he is confined in any prison, whether under a sentence of imprisonment, transportation or otherwise". A writ petition had been filed in 1984 against this provision and the Supreme Court dismissing the petition held that clause 5 of Section 62 of RPA was "reasonable, and in public interest and not arbitrary".

The law thus bars all undertrial prisoners who cannot arrange, bail, including those charged with minor offences, from the right to exercise their franchise. Thus, though the undertrial prisoners cannot vote, they are contesting elections all over the country for so many years. This is palpably anomalous. This provisions of RPA is discriminatory and denies constitutional rights, nay human rights, of a large number of undertial prisoners. It is absolutely necessary for the Supreme Court to review its decision in this regard.

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LIFE CONVICTS

Agonies of prisoners in Indian jails undergoing life-imprisonment remain largely unknown. All of them are not dreaded professional criminals who habitually commit heinous crimes. Many of them had committed serious crimes like murder in a fit of sudden impulse or under very grave and unsettling circumstances. Indeed, each case of life convict is different and the causes and motivation of criminal conduct by him are also different. An ad-hoc and uniform approach towards all is incorrect and also not desirable from the viewpoint of their subsequent rehabilitation in society. This brings up the issue of the aim of punishment, and particularly long-term punishment.

None will disagree that dangerous and notorious criminals should be out off streets and kept in jails for long periods of time since they pose a threat to peace-loving citizens. However, not many dreaded criminals are languishing in jails and suffering long-term imprisonment. For the average run of long-term prisoners, long sentences do not have any constructive impact nor do they serve any therapeutic purpose.

Experts like Dr. Walter Reckless, who in the Fifties visited India on the invitation of the government submitted a perceptive report for reorganizing prison administration in the country on modern line are of the view that a well-staffed prison with a diversified programme can have a positive and benign impact on the average run of long-term prisoners between six months and two years. Anything under that reduces the impact of good institutional programme for reforming a prisoner and anything over is a purely punitive or protective detention. Many modern penologists are also of the view that from the standpoint of minimum constructive impact on individual prisoner, long sentences are counter-productive and cannot be justified.

Suspension, remission and commutation of sentences of the prisoners suffering various terms of imprisonment are governed by the provisions of the Criminal Procedure code. Section 433-A of the Criminal Procedure Code prescribes that "if a person is convicted of an offence for which death is one of the punishments provided by law, or whereas the sentence of death imposed on a person has been commuted under section 433 of Criminal Procedure Code into one of imprisonment for life, such person shall not be released unless he had served atleast fourteen years of imprisonment". This section of the Criminal Procedure Code, in the opinion of the Justice A.N. Mulla committee on Jail Reforms (1980-83) had the effect of sacrificing the "values of rehabilitation and reformation on the lifers altogether".

In selected cases, the power of the Governor to grant pardon or remit or commute sentences can be invoked under Article 161 of the Constitution so that the prisoners can be released even before completing 14 years of imprisonment. However, it has been noticed that the exercise of this power by the Governor for premature release of the prisoners has not always been based on objective criteria. The Supreme Court, in the well-known case of Maruram Vs. Union Goverment of India in 1981 has laid down that Section 433(a) of the Criminal Procedure Code does not affect the power conferred by Article 161 on the governor to grant remission of sentences. The Governor, on the advice of Council of Ministers, can thus prematurely release prisoners sentenced to life imprisonment.

Further, different states have different rules regarding release of the life convicts. The National Human Rights Commission gets petitions from life convicts over 70 years of age who are languishing in prisons for more than 30 years. A life convict in a Central Jail in Lucknow told me that he remained incarcerated for nearly 30 years. In a letter to all Chief Ministers, the Chairman of National Human Rights Commission has requested them to undertake a review of the system of release of prisoners and avoid any inconsistency in the application of the law.

At present, in most jails there is no well-laid programme of training for lifers and preparing them for suitable rehabilitation after their release. Indeed, a life convicts recieves very littlle individual attention. Quite often he gets huddled together with the short-term and medium-termers, casuals and adolescent offenders. There is no special provision for a comprehensive study of a life convict. He is allotted work on the same basis as other medium or long-term prisoners. His individual needs and problems get submerged in the routine of prison administration. As years roll by, he gets steeped in the typical subculture of the prison and develops allegiance to criminal groups. His value system gets seriously undermined.

The all India Jail Manual Committee in its report (1957-59) recommended that on admission a comprehensive social and psychological study of the life convict should be undertaken. The treatment programme should consist of diversified education work, vocational training, training in responsible community living etc. Such a programme should be balanced and take note of the needs of each inmate. While allotting work or planning training programmes, the possibility of imparting multiple skills according to the abilities of each life convict should be kept in mind. The acquisition of multiple skills will improve his prospects of employment after he steps out of prison.

Indeed, pre-release preparations and planning for aftercare and follow-up need special attention in the case of the life convicts. The prison administration and aftercare services must work in tandem. In these respects, there is need for a positive outlook. Rule 58 of the United Nations Standard Minimum Rules for the treatment of prisoners prescribes that the period of “imprisonment should be used to ensure as far as possible that on his return to society, the offender is not only willing, but also able to lead a law-abiding and self-supporting life”.

An enormous amount of criminal research in various parts of the world has shown that very often prisoners return with an increased commitment to criminal lifestyles. Hence prison regimes must focus on prisoners' return to society and encourage skills and opportunities that would facilitate a law-abiding life after release. Many life convicts also complain of harassment by the police when they are released on furlough or proceed on annual leave. Senior police officers must curb firmly such vexatious acts by their subordinate staff.

There are advisory committees in each district comprising the District Judge, District Magistrate and Superintendent of Police to review the cases of premature release of the life convicts along with cases of convicts sentenced to medium terms of imprisonment. Unfortunately, working of most these Advisory Committee in considering cases of premature releases of the long-term convicts is very unsatisfactory. Their method of review of sentences is often found to be haphazard and cursory. Scores of cases, as pointed out in the reports of the Mulla Committee, are disposed of hurriedly within a couple of hours without properly studying relevant facts and background of each case.

Advisory committees should hold separate meetings for reviewing cases of the life convicts only. This will facilitate proper and careful reviewing. Orders of the government on the recommendations of the Advisory Committee should also be issued expeditiously. At present the life convicts have very little faith in the efficacy of the Advisory Committees because of the lackadaisical manner of their functioning.

As things stand now, life convicts in different Indian prisons feel bitter and discontented. Urgent action by state Government is called for to deal with their various problems and grievances. They feel very strongly about the inclusion of section 433 A in the Criminal Procedure Code. This has dashed their hopes' of early release from prisons by getting benefits of remission. They will thus have to go through imprisonments of 14 years. This makes them sullen and bitter and destroy chances of any meaningful endeavour on their part for self-improvement.

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WOMEN PRISONERS

The total number of male prisoners in India in 1993, as per statistics collected by the Regional Institute of Correctional Administration, Vellore, was 370407 as against the total of 10738 women prisoners. Female prisoners thus constitute a very small proportion of the total prison population of the country. Comparative national studies in 1960 estimated that prison population consisted of 2 percent women in Japan, about 4 percent in Germany and about 5.9 percent in Argentina. While in 1820, women constituted about 9 percent of the prisoners in USA, in 1980s, it was about 4 percent. It can thus be seen that even in countries of different political and economic structures, women invariably remain in small minority in prisons. This relatively low proportion of women in prison population has been attributed to various factors like women's innate nature, their domestic status, putative weaknesses, ambiguity regarding their public and legal responsibilities. Unfortunately, this minority status of women in prison tends of reinforce their lost status.

Women prisoners more than their male counterparts are prisoners of their sex with special problems not faced by men in prison. Since women comprise a small percentage of the prison population, their problems are often overlooked. Their problems are, however, severe and deserve special attention.

In India, as early as in 1919-20, the Indian Jails Committee had recommended that structurally separate jails or at least separate enclosures for women prisoners should be so constructed that the 'female prisoners or lady visitors entering the jail should be able to reach the female yard without coming under the observation of male prisoners". Unfortunately, condition in this respect has registered very little improvement. In most of the jails of the country, whether central prisons, district prisons or sub-jails, women prisoners have to walk through men's sections and undergo very humiliating experience often-times.

The Indian Jail Committee further argued strongly in favour of creating one or two institutions for convicted women prisoners in each State and concentrate women offenders there from all over the State. The Committee felt that removal of women offenders from their home towns was a lesser evil than allowing them to languish in miserable conditions in some corners of the jails in their own districts. The Committee stressed the need for proper classification of prisoners and separating female adolescents from old convicted prisoners, prostitutes and procurers from women, who have lived hither a respectable life. Unfortunately, state governments have paid scant attention to these recommendations.

At present in India, there are 922 jails of which only 14 are exclusive prisons for women. Women prisoners in many jails are confined in enclosures, the keys of which are held by the male staff. They are often exploited and suffer many odd problems. Many complaints of sexual abuse (some of them substantiated during enquiries) have also been received in the National Human Rights Commission. "It is the small number of women in prisons" says the All India Committee on Jail Reforms 1980-83 (better known as the Mulla Committee), "which in our view is responsible for their needs being neglected. The position of these women scattered in small clusters in jails, is highly vulnerable."

Most of the women prisoners in Indian jails come from poor and disadvantaged sections of the society. 'Women in Prison', to quote the words of an eminent sociologist, "are the disadvantaged losers in our complex and competitive society". Women have the added problem, in many instances, of responsibility for their dependents and they also do not have often the skill for legal employment after serving the term of imprisonment.

Training and treatment of women prisoners is often badly neglected. 'During its visit to different jails in the country, the National Human Rights Commission has noted with dismay that in most of the jails there is no scheme for gainful vocational training, and not even elementary education for women prisoners. Further, women prisoners suffer from unhealthy living conditions, exploitation and separation from their families. In a 'Nari Bandi Niketan' of Uttar Pradesh, a number of women prisoners undergoing long periods of imprisonment told me with great anguish that they have not heard anything from their children and family members for a long time. Many of them were over anxious to know particularly the fate of their children. There is urgent need to ensure that women prisoners should have frequent opportunities to unite with members of their families. The Mulla Committee on Jail Reforms expressed the view that to have specially separated jails for 5 to 6 women offenders in every district or sub-divisional jail is administratively difficult and financially prohibitive. Again concentrating all women prisoners in one jail can be faulted on the ground that this arrangement keeps women prisoners in far-away places separated from their kith and kin. A proper balance has to be struck between the two alternatives.

FEMALES UNDERTRIALS

It is also disturbing to note that there is prolonged imprisonment of undertrial women who constitute more than 70 per cent of female jail population of the country. There are undertrial women languishing for 4 to 5 years in jails for offences for which the sentence would have been far less if they had been convicted. Again, many women prisoners continue in jails for long periods as they are unable to defend themselves and ignorant of the ways and means of securing legal help and thus totally at the mercy of the jail officers, who often fail to show any understanding of their problems. The National Expert Committee on Women Prisoners with Justice Krishna Iyer as its Chairman (1987) stated after visiting many women prisons that both prisoners and the prison staff suffer from what was called by the Supreme Court "the pathology of misinformation or ignorance about rights and limitations". This often leads to callous disregard of human rights. Similarly, courts also fail to show proper awareness of women forming a special category, especially those with minor children or bread-earner responsibilities in cases of female-headed households. "They are" to quote the words of the Krishna Iyer Committee on Women Prisoners, "a low dispositional priority and receive routine neglect. The immensely larger undertrial figures among women vis-a-vis men prisoners is adequate illustration of how judicial processes have outcast the woman in a custodial limbo".

To reduce the number of women undertrials, the Mulla Committee recommended that bail should be liberally granted to them and those not able to furnish sureties should be released on personal recognizance. The Probation of Offenders' Act should be extensively used for the benefit of women offenders in order to keep them away from prisons as far as possible. Women needing protective custody should not be sent to prisons and those already there should be removed to special institutions run for that purpose. In the well-known case of 'Hussainara Khatoon',[1] the Supreme Court held that the word 'protective custody' is an euphemism calculated to disguise what is really nothing but imprisonment and is nothing "short of blatant violation of personal liberty guaranteed under article 21 of the constitution". The court issued direction that all such women and children in 'protective custody' in the jails of Bihar should be released and taken forthwith to welfare homes or rescue homes and should be kept there and looked after properly. There should be wider use of parole or furlough in case of women. "The women's central role in relation to the family and the strain caused on her immediate family as a result of imprisonment", observed Krishna Iyer Committee on Women Prisoners, should also "necessitate in liberal use of bail, probation, parole and other innovative forms of sentencing". The Committee recommended setting up of women's courts. Such institutions, preferably headed by women and committed to less formal procedures of adjudication, will ensure speedy and specialized attention to women within the Criminal Justice System.

The National Human Rights Commission's Members as well as officers visiting different jails have noted with dismay that there is no pre-release planning and well-laid policy for rehabilitation of women prisoners after their release. Indeed, women offenders in India face peculiar problems of rehabilitation during their post-release period. They become vulnerable to suspicion and rejection and are stigmatized for having been in prisons. Imprisonment has more adverse impact on women than men. The society considers them as pariahs. Some of the women prisoners suffering life-imprisonment in jails said that their husbands no longer accept them after their release and they have no other place to go. Indeed a pathetic situation!

Moreover, a number of women prisoners suffer from mental depression and other forms of psychosomatic illness. There is hardly any arrangement for psychiatric treatment and counselling. Many women prisoners are totally ignorant of jail rules and procedures, and many life convicts, as NHRC team could find during a visit to a woman's prison in U.P. are unaware of the remission already earned by them. They have become victims of State custody, "instituted by legal processes, their own ignorance and poverty". In some jails there are creches for children (up to the age of 5 years) accompanying women prisoners.

There is an international handbook on good prison practice known as 'Making Standards Work' prepared by Prison Reform International. It suggests that in a woman's institution, there should be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made that, wherever practicable, children should be born in hospitals. outside the institution. If a child is born in a prison, this shall not be mentioned in the birth certificate.

In U.S.A. courts have been receptive to the claims of female prisoners that their conditions of confinement should be equal to that of their male counterparts. Thus markedly unfair conditions in women's prisons in comparison to men's prisons have been held to violate the equal protection clause of the Fourteenth Amendment. In the case of Cauterino *v* Wilson, the court held that the officials of the Kentucky Department of Correction, unconstitutionally discriminated against the inmates of Kintucky's only prison for women. Among the equal protection violations found were inferior programmes, training, vocational education when compared to those available to similarly situated inmates at the State male correctional institutions. Similarly, health care needs of female prisoners must comport with the American Supreme Court decision in 'Estella *v* Gamble'. This decision lays down that the prison officials are in violation of Eighth Amendment principle against unnecessary infliction of pain when they show a deliberate indifference to the serious medical needs of the prisoners.

For properly appreciating the problems of women prisoners, the fact has to be borne in mind that women prisoners have an entirely different criminal profile to male prisoners and a woman's social reality is substantially different from that of men. This difference should be reflected in their treatment in the criminal justice system, and particularly in their treatment in prisons. Women commit far less violent and serious crimes, far less frequently than men and they re-offend and abscond less when they are released temporarily from prison. These apply, particularly to women, who have children they love and want to see. A gender-specific policy based on substantive equality should acknowledge that women are the primary carers of most of the children in society. It should also note that imprisoned women receive far less support from their partners than do male prisoners.

MODEL BILL

The NHRC has prepared a model Prison Bill for replacing the century-old Prison Act of 1894. The Bill discards some of the outdated provisions of the old Prison Act and reflects modern penological thinking on the reformation and rehabilitation of the criminals. It accepts the recommendations of the Mulla Committee and provides that in the headquarters of the Prison Department, a lady officer of the rank of DIG should be posted exclusively to look after the problems of women prisoners. Apart from ensuring complete segregation and differential management of women prisoners under the supervision of the female staff, the proposed Bill advises the State governments to formulate a comprehensive scheme for care, protection, treatment, education and development of women prisoners in keeping with their personal characteristics and rehabilitation needs. The NHRC hopes to persuade the Central and State Governments to pass a new Prison Act on the lines of the Bill prepared by it.

REFERENCES

1. Hussainara Khatoon *v* State of Bihar, A.I.R. 1979 (SC) 1360.

21

FORGOTTEN VICTIMS

In our present Criminal Justice System based on Anglo-saxon adversarial pattern, the victim of crime who is the witness for the State against the offender is often forgotten and neglected.

During the last 100 years, there have been far-reaching changes in the Criminal Justice system concerning the rights of the accused during the investigation of crimes, prosecution of offenders and the punishment to be imposed in the event of conviction. Statistics on the offenders, details of arrests by the police, administration and release of the criminals from the penal institutions are all kept but collection of various aspects of information relating to the victims remains neglected.

It was only after the Second World war, that in the western countries like France, Germany U.K., as well as Canada, USA and Australia, there emerged a progressive school of thought in the Criminal Justice System which tried to shift the focus of attention to the victim who really deserves redress but often fails to get it. The historical evolution of the penal system from private vengeance to the state-administered justice has resulted in a Criminal Justice process in which the victims play only a secondary role. Scholars like Von Henting, Benjamin Mendelsohn and Henry Elenberger in their studies have all felt that in order to better understand the origin and implications of crime, it is necessary to study properly criminal-victim relationship.

A movement for the recognition of the victim of crime deserving a more effective remedy than the traditional practice of bringing civil suits was begun by English penal reformer Margery Fry in 1955. There was also demand for increased victim participation in the sentencing process. This was associated with studies which documented the victims alienation from the criminal justice system.

Studies of the victims before the law courts have revealed that their grievances are as much with the procedures of the Criminal Justice System, particularly their lack of involvement in the decision-making process, as with the supposed injustice of the outcome.

COURT PROCEDURES

In the Anglo-saxon adversarial criminal justice pattern, the victim often finds the court procedures frustrating and cumbersome. The civil trial takes the form of victim versus offender while the criminal trial takes the form of offender versus the state. The offence is not just against the victimised person but against the state. The state becomes the victim and not an arbiter in the struggle between the victim and the offender. If the victim feels that nobody cares for his suffering, it is infact, so, because institutionally nobody does. Both victim and defendant have to stand as witnesses in the Court of Law during trial, but as the witness, the victim is more vulnerable than the defendant. The victim, unlike the defendant, can be asked about his history and character and he can be subjected to severe cross-examination by both the counsels. The status of the victim in the adversarial system thus remains quite vulnerable.

A very important grievance of the victims is their lack of 'standing' in the criminal processes. In the USA, a victim of crime while testifying before the Presidential Committee set up to study the condition of the victims said, "why didn't anyone consult me? I was the one who was kidnapped and not the State of Virginia." (President's Task Force and Victims of Crime 1982, p. 9) Research works on the subject done in various countries have shown that the victims demand not only compensation or punishment of the offenders, they also wish to be recognised as important and necessary participants in the criminal justice system. The 1990 report of the Compensation Tribunal in Victoria (Australia) documents that for the victims being heard is as important as being compensated.

The presumption that the prosecutor represents the victim is very often not correct. It is contradicted by the experience of many victims. If the public interest comes into conflict with that of the victim, the former prevails. Priority given to certain types of cases may determine the decision whether the offender will be prosecuted or not. Even when the offender is charged, there is no guarantee that the judiciary will be aware of the full impact of the crime upon the victim.

Prosecutors often do not disclose the details of impact of the crime on the victim to the sentencing authority. The extent of harm sustained by the victim is not revealed to the state authority, particularly in cases, where the accused pleads guilty or where there have been pretrial negotiations between the prosecution and the defence.

In America the new perception that criminal law should be responsive to the needs and problems of the victims was forcibly expressed by the President's Task Force on Crime, which asserted that - "Victims, no less than defendants, are entitled to their day in courts. Victims, no less than defendants are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimised.... (1982, pp. 76-7)".

The international community also has felt the need to integrate the victim to the criminal justice process. The Seventh U.N. Congress at Milan adopted the Declaration specifically mentioning that the views and concerns of the victims are to be presented and considered at appropriate stages of the criminal justice process. The declaration was formally approved by the General Assembly of the United Nations in December, 1985.

VICTIM IMPACT STATEMENTS

Some sort of victims' integration in the criminal justice process has been tried in different countries. In the USA, and in parts of Canada, the right has been granted in the use of Victim Impact Statement

(VIS). It is the statement made by the victim and addressed to the Judge. It contains descriptions of the harmful financial, social, psychological and physical consequences of the crime on the victim. The VIS in some jurisdictions, also includes the statement concerning the victim's feelings about the crime, the offenders and the proposed sentences.

In the US, plea-bargaining is one of the most common ways of disposing of cases. Many states in America have now passed laws that allow victim participation in plea-bargaining. In Australia, the National Committee on Violence has recently recommended that VIS should be introduced in all cases subject to some safeguards against abuse.

It has been argued in favour of the VIS that the effectiveness of the sentence will increase if the court is aware of the feelings of the victims. This will also result in increased victim cooperation with the criminal justice system, thereby enhancing its effectiveness. It has been sometimes argued that victims may turn out to be vindictive and the objective approach of the court may be influenced by the 'subjective pressure of the victim'. Research work done by the US Justice department shows that less than 10 percent of the victims reported crime in order to see that the offender is punished. Very often the victim wants compensation, help and consultation rather than heavy punishment for the offenders even in cases where the offenders were strangers. A study conducted in Australia shows that the victims, particularly of serious crimes, expressed interest in receiving information concerning the case at all stages of the process.

FINDINGS OF VICTIMISATION SURVEYS

Crime reviews are normally based on information collected by the police. It is a well known fact that a large number of cases are not reported before the police and many reported cases are not registered. Like the criminologists, the victimologists were unaware of the true incidence of crime or victimisation.

The development of criminal victimisation survey has done much to change the situation. Victimisation survey has now created the second source of information. Victimisation surveys have been conducted in Great Britain, Australia, Canada, Netherlands and provided valuable wealth of information. It is now a regular feature of crime statistics in the United States.

In 1987, the proposal for an international victim survey was formally made at the Council of Europe conference. Up till now the survey has been carried out in more than 41 countries among more than 80000 respondents. The study was characterized by an authoritative reviewer as "a quantum leap in international statistics on crime and justice issues" (Lynch, 1993).**

In a paper presented at the 8th International Symposium on Victimology at Adelaide (August 21 to 26, 1994), the Director of European Institute of Crime Prevention and Control Mr. Matti Joutsen mentioned that the international victimisation survey revealed that in developing countries one of prime reasons for non-reporting of crimes was the negative attitude towards the police. The survey revealed that the few victims who turn to the criminal justice system run up against an almost total lack of victim services. Whereas victim advocates in developed countries are pushing for hot-lines, shelters, special victim officers, baby-sitting services, transportation to and from the police station and the court, counselling and referral services to other agencies, such facilities are not just existing in developing countries. The reason cited by the governments is lack of funds. The lack of victim services aside, the victim often encounters insensitive treatment by the different criminal justice agencies from the police through to the courts.

In India, very limited efforts have been made so far of any kind of victimisation survey. The Institute of Criminology and Forensic Science (ICFS), New Delhi, had undertaken two crime victim surveys. One with respect to homicide victims in Bangalore and Delhi, and the second with respect to those killed in motor vehicle accidents in Delhi. These two surveys yielded a rich harvest of data. They indicated that majority of the cases of homicides are single-assailant and single-victim phenomena, committed during evening hours by using sharp-edged weapons. The proportion of homicide victims belonging to Scheduled Castes and Scheduled Tribes is higher than their census proportion. Most of the victims were bread-winners for their families and belonged to lower and middle-income groups. In 88 percent of homicides in Bangalore and 58 percent in Delhi, victims and the offenders had prior interaction. The police have not been responsive to the emotional trauma of the victims, and the latter nurse a sense of grievance against the police. Further, a vast majority of the bereaved families were facing acute financial hardship after the death of their bread-winners. Not many individuals and volunteer organisations had come forward to help the distressed families.

The need of the time is to work out a coordinated policy to provide help and sustenance to the family members of the victims. Compensation to the victims of all types of offence may not be practically feasible, but compensation to the victims of violent offences, as is being done in advanced countries, had to be seriously thought of.

In an evaluation report on victim services in the US, Skogan* 'points to a mismatch between services and victim needs. Although the programme focused on counselling, many victims faced more mundane problems. When asked what help they needed that the programs could not deliver, more than half mentioned financial problems or frustration in arranging victim compensation. If this is the problem of the victims is an affluent country like US, the situation in a developing country like India can be well imagined.

COMPENSATION

Provision of compensation to the crime victims is the crying need of the hour. International Covenant on Civil and Political Rights, 1966, indicates that an enforceable right to compensation is conceptually integral to human rights.

Article 9(5) of the Covenant reads as under:-

> "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

Switzerland had a scheme of compensation to victims of crime since 1937. In the United Kingdom, a Criminal Injuries Compensation Board within the Department of Justice of the Home Office started functioning since August, 1964; A crime Compensation tribunal has started functioning in Newzealand under an Act of 1964 and in the United States of America the States of California (1965), New York, (1967) Hawaii (1967), Navada (1969), New Jersey (1971), Alaska (1972), Georgia (1972), Rhode Island (1972) and Washington (1973) have introduced some schemes for compensation to the victims of crime and from the years shown against each.

It must, however, be stated that in the United States, the compensation to the victims of crime still comes more from the private insurance policies rather than from these schemes.

Victimology in India largely remains a non-starter. No comprehensive legislation, save in the fields of motor accident and factory injuries has yet been enacted. In India only provision regarding payment of compensation to the crime victim is contained in CRPC under section 357 which provides for compensation for loss or injury caused by the criminal offence to victim after fine is imposed by the court. The provision does not make it mandatory for the state to pay compensation to the victims. However, the amount of compensation has not been uniform and no cardinal principles have not been laid down. It is desirable to frame a suitable legislation under which the State should pay compensation to the victims of crime or to their kith and kin.

The Supreme Court, however, has stepped in the breach and interpreted the constitution for victimological justice.

While awarding interim compensation for wrongful detention, the Supreme Court in the [Rudul Sha *v/s* State of Bihar (AIR 1983, SC 1086)] observed that "respect for rights of individuals is a bastion of democracy. Therefore, the state must repair the damage done by its officers to the petitioners rights". Taking into consideration the great harm done to the petitioner by the Government of Bihar, the Supreme Court ordered the State to pay to the petitoner a further sum of Rs. 30000/- as an interim measure in addition to the sum of Rs. 5000.00 already paid by it. The order of compensation was in the nature of a palliative and it did not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials.

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1. Lynch James P. 'Understanding Crime : Experiences of Crime & Crime Control' (Rome, UNICRI pp 175-189).

   The details regarding the survey has been taken from V N Rajan's article "Victimology in India" contained in the book of "Crime and Corrections in India."

2. Skogan Wesley G : "The fear of crime and its behavioral implications". Macmillan PP 167-188.

APPENDIX

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

(WITH PROCEDURAL REGULATIONS)

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

NO. 10 OF 1994

(8th January, 1994)

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fourth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent and commencement

(1) This act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India;

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions

(1) In this Act, unless the context otherwise requires-

(a) 'armed forces" means the naval, military and air forces and includes any other armed forces of the Union;

(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

(c) "Commission means the National Human Rights Commission constituted under section 3;

(d) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

(e) "Human Rights Court" means the Human Rights Court specified under section 30.

(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966.

(g) "Member" means a Member of the Commission or the State Commission, as the case may be, and include the Chairperson;

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act 1992

(i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the Nation Commission for Women Act, 1990

(k) "Notification" means a notification published in the official Gazette;

(l) "Prescribed" means prescribed by rules made under this Act;

(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

Chapter II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The commission shall consist of -

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is or has been, a Judge of the Supreme Court;

(c) one Member who is, or has bee, the Chief Justice of a High Court;

(d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clause (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section be made after obtaining the recommendations of a Committee consisting of

(a) the Prime Minister — Chairperson;

(b) Speaker of the House of the People — member;

(c) Minister in-charge of the Ministry of Home Affairs in the Government of India — member;

(d) Leader of the Opposition in the House of the People — member;

(e) Leader of the Opposition in the Council of States — member;

(f) Deputy Chairman of the Council of States — member;

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

5. Removal of a Member of the Commission

(1) Subject to the provision of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1) the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be-

(a) is adjusted an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of Office of Members

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chaiperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

7. Member to act as Chairperson or to discharge his functions in certain circumstances.

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chainperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc. not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission:-

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary—General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

Chapter III

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-

(a) inquiry, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of-

  (i) violation of human rights or abetment thereof or

  (ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

13. Powers relating to inquiries

1. The Commission shall, while inquiring into a complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:-

    (a) summoning and enforcing the attendance of witnesses and examining them on oath;

    (b) discovery and production of any document;

    (c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry maybe found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the

Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof for many office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it think fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement:-

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission—

(a) considers it necessary to inquiry into the conduct of any persons; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

Provided that nothing in this section shall apply where the credit of a witness is being impeached

Chapter IV

PROCEDURE

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may—

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:-

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or person;

(2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(4) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission,

(6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the Action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special report of the Commission

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively,

as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any

Chapter V

STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the .... (name of the State) Human Rights Commission to exercise State Commission under this chapter.

(2) The State Commission shall consist of:-

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court;

(c) one Member who is, or has been, a district judge in that State;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience, in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may require into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the Words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

22. Appointment of Chairperson and other Members of State Commission

(1) The Chaiperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of-

(a) the Chief Minister — Chairperson

(b) Speaker of the Legislative Assembly — Member

(c) Minister in charge of the Department of Home in that State — Member

(d) Leader of the Opposition in the Legislative Assembly — Member

Provided further hat where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall be members of the Committee.

Provided also that no sitting Judge of High Court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the committee.

23. Removal of a member of the State Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other

Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Members of the State Commission

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Members of the State Commission

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of a

Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission-

  (a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

  (b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) subject to such rules as may be made by the State government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or

importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Horses, or where such Legislature consists of one House, before that House before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the Sate Commission and the reasons for non-acceptance of the recommendations, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to "Commission" shall be construed as reference to "State Commission"

(b) in section 10, in sub-section (3), for the word "Secretary-General", the word "Secretary" shall be substituted'

(c) in section 12, clause (f)) shall be omitted;

(d) in section 17, in clause (i) the words "Central Government or any" shall be omitted;

Chapter VI

HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter VII

FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of

grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section 91)

33. Grants by the State Government

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller rand Auditor-General of India.

(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with

such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has a connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

35. Accounts and audit of State Commission

(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-

General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

Chapter VIII

MISCELLANEOUS

36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government State Government, Commission, or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central government, State Government, Commission or the State Commission of any report, paper or proceedings.

39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

   (a) the salaries and allowances and other terms and conditions of service of the Members under section 8;

   (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

(c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

(e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is a in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules

may provide for all or any of the following matters, namely:-

(a) the salaries and allowances and other terms and conditions of service of the members under section 26:;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;

(c) The form in which the annual statement of accounts is to be prepared under sub section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house of Parliament.

43. Repeal and Savings

(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

PROCEDURAL REGULATIONS

NATIONAL HUMAN RIGHTS COMMISSION (PROCEDURE) REGULATIONS

No. A-11031/1/64/NHRC, In exercise of the powers conferred by sub-section (2) of Section 10 of the Protection of Human Rights Act, 1993(No. 10 of 1994), the National Human Rights Commission hereby makes the following regulations, namely:-

1. Short Title and Commencement

(1) These Regulations may be called the national Human Rights Commission (Procedure) Regulations, 1994

(2) They shall come into force with effect from the 1st day of March, 1994

2. Definitions

In these regulations unless the context otherwise require—

(a) "Act" means the Protection of Human Rights Act, 1993

(b) The "Chairperson" means the Chairperson of the Commission.

(c) The "commission" means the National Human Rights Commission.

(d) "Member" means a Member of the Commission

3. Headquarterss of the Commission

The Headquarters of the Commission shall be located at Delhi

4. Venue of the Meetings

The Commission shall ordinarily hold its meetings and sitting in its office located at Delhi. However, it may, in its discretion, hold its meetings and sittings at any other place in India if it considers it necessary and expedient.

5. Periodicity of meeting

The Commission shall normally have its regular sitting in the first and third weeks of every month, excepting holidays. However, the Chairperson by himself or at the instance of one more of the members may direct a special sitting of the Commission to be convened to consider any specific matter of urgency.

6. Secretariat Assistance

The Secretary-General, along with such other officers of the Commissions as may be directed by the Chairperson, or considered necessary, shall attend the meetings of the Commission.

7. Agenda

The Secretary-General shall, in consultation with the Chairperson, prepare the agenda for each meeting of the Commission and shall cause notes thereon to be prepared by the Secretariat. Such notes shall, as far as possible, be self-contained. Specific files covering the agenda items shall be made readily available to the Commission for reference. The agenda papers shall ordinarily be circulated to the Members at least two clear days in advance of every meeting; but when matters are set down only for hearing, cause list of the day of sitting shall be prepared and circulated.

8. Procedure for dealing with complaints

(1) All complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a Bench of two members constituted for the purpose not later than two weeks or receipt thereof. Ordinarily complaints of the following nature are not entertainable by the Commission.

- (a) In regard to events which happened more than one year before the making of complaints;
- (b) with regard to matters which are sub-justice;
- (c) which are vague, anonymous or pseudonymous;
- (d) which are of frivolous nature; or
- (e) those which are outside the purview of the Commission.

(2) No fee is chargeable on complaints.

(3) Every attempt should be made to disclose a complete picture of the matter leading to the

complaint and the same may be made in English or Hundi to enable the Commission to take immediate action. To facilitate the filling of complaints, the Commission shall, however, entertain complaints in any language included in Eighth Schedule of the Constitution. It shall be open to the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

(4) The Commission may, in its discretion, accept telegraphic complaints and complaints conveyed through Fax.

(5) The Commission shall have power to dismiss a complaint in limini.

(6) Upon admission of a complaint, the Chairperson/Commission shall direct whether matter would be set down for inquiry by it or should be investigated into.

(7) On every complaint on which a decision is taken by the Chairperson/Commission to either hold an inquiry or investigation, the Secretariat shall call for reports/comments from the concerned Government/authority giving the latter a reasonable time therefore.

(8) On receipt of the comments of the concerned authority, a detailed note on the merits the case shall be prepared for consideration of the Commission.

(9) The directions and recommendations of the Commission shall be communicated to the concerned Government/authority and the

petitioner as provided for in sections 18 and 19 of the Act.

(10) The Commission may, in its discretion, afford a personal hearing to the petitioner or any other person on his behalf and such other person or persons as in the opinion of the Commission should be heard for appropriate disposal of the matter before it and, where necessary, call for records and examine witnesses in connection with it. The commission shall afford a reasonable hearing, including opportunity of cross-examining witnesses, if any, in support of the complaint and leading of evidence in support of his stand, to a person whose conduct is enquired into by it or where in its opinion the reputation of such person is likely to be prejudicially affected.

(11) Where investigation is undertaken by the team of the Commission or by any other person under its discretion, the report shall be submitted within a week of its completion or such further time as the Commission may allow. The Commission may, in its discretion, direct further investitgation in a given case if it is of opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may direct inquiry to be carried by it and receive evidence in course of such inquiry.

(12) The Commission or any of its members when requested by the Chairperson may undertake visits for an on-the-spot study and where such a study is undertaken by one or more members, a report thereon shall be furnished to the Commission as early as possible.

9. Minutes of the Meeting

(a) The minutes of each meeting of the Commission shall be recorded during the meeting itself or immediately thereafter by the Secretary-General or by any other officer as directed. Such minutes shall be submitted to the Chairperson for his approval and upon approval, be circulated to all the Members of the Commission at the earliest and in any case, sufficiently before the commencement of the next meeting.

(b) The conclusions of the Commission in every matter undertaken by it shall be recorded in the form of an opinion. Dissenting opinions, if given, shall also form part of and be kept on record. Action shall be taken on the basis of the majority opinion where there be any difference.

(c) Follow-up Action:

Unless specifically authorised, no action shall be taken by the Secretariat of the Commission on the minutes of the meetings until the same and confirmed by the Chairperson.

10. Record of minutes

A master copy of the minutes of every meeting and opinions of the Commission shall be maintained duly authenticated by the Secretary-General and a copy of the minutes pertaining to each item shall be added to the relevant file for appropriate action. Opinions shall be kept in the respective records and for convenience, copies thereof with appropriate indexing shall be kept in guard files.

11. Report of Action Taken

Report of follow-up action shall be submitted to the Commission at every subsequent sitting indicating therein the present stage of action on each item on which the Commission had taken a decision in any of its earlier meetings, excepting the items on which no further action is called for.

12. Transaction of business outside the Headquarters

The Commission or some of the members may transact business at places outside its Headquarters as and when previously approved by the Chairperson, provided that if parties are to be heard in connection with any inquiry under the Act, at least two members shall constitute the bench of the Commission for such purpose.

13. Authentication of orders and decisions

(1) Orders and decisions of the Commission shall be authenticated by the Secretary-General or any officer of the Commission (authorised by the Chairperson) not below the rank of an Under Secretary.

(2) Copies of enquiry reports or orders passed finally disposing of matters by the Commission shall be furnished free of cost to the petitioner or his representative.

(3) Unless any document is classified by the Commission as confidential, copy thereof would be available to the parties in the matter on payment of a reasonable fee raised to meet the cost. Every effort should be made to provide the copies with utmost expedition and, in any case, not later than one week of the date of request.

14. Annual Report

The Commission shall furnish its annual report for the period commencing from 1st April of the year to 31st March of the succeeding year to the Central Government and to the State Governments concerned as provided in Section 20(1) of the Act. The original report shall be signed by the Chairperson and Members of the Commission and appropriately preserved and a duly authenticated copy shall be sent to the appropriate Government by end of May of every year.

15. Special Reports

The Commission may furnish such special reports on specific matters as maybe considered necessary in terms of 'Section 20(1) of the Act.

16. Reports on Complaints and Inquiries

Every report to which section 18 and 19 of the Act applies shall be sent to the concerned Government, authority or person, as the case may be within one week of completion of the proceedings before the Commission and on receipt of the comments of the concerned Government or authority, the Commission shall publish the repot in the manner provided in sections 18(6) or 19(3) of the Act, as the case may be within one week of the receipt of the appropriate intimation.

17. Printing of the Report

The Secretariat of the Commission shall be responsible for the printing of the Annual Report and Special Reports with utmost expedition and in any case, not later than one month of finalisation of the same.

18. Investigtion Team

The commission shall have its own team of investigation to be headed by a person not below the rank of a Director-General of Police appointed by it and such team shall consist of one Deputy Inspector General of Police, 2 Superintendents of Police, 6 Deputy Superintendents of Police and 24 Inspectors of Police and such other categories of officers as the Commission from time to time decides. The Commission may in any given case appoint an appropriate number of outsiders to be associated with the investigation either as Investigators or Observers.

19. As and when any matter which is not covered by these Regulations arises, it shall be competent for the Commission to make appropriate directions and the Commission may add, delete, amplify and amend these Regulations from time to time.

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Shri Sankar Sen, Director General, National Human Rights Commission (NHRC) joined the Indian Police Service in 1960. He graduated from the Presidency College, Calcutta, and obtained Masters Degree in History from the Calcutta University. He was allotted to the Orissa cadre and held a number of posts with distinction. He also served in the Central Intelligence Bureau for 7 years. Later, on deputation, he joined the Border Security Force as the Inspector General and subsequently was promoted as the Additional Director General. Thereafter, he was posted as the Director of the SVP National Police Academy (NPA), the premier institution for training of senior police officers of the country. As the Director of the NPA, he was responsible for many innovative changes in the training programmes of Indian Police Service officers. On completion of his assignment in NPA, he joined as the Director General (Investigation) of the National Human Rights Commission. He was awarded the Police Medal for Meritorious Service in 1979 and the President's Police Medal for Distinguished Service in 1986.

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